

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE
APPEAL No. 05 of 2019 (WZ)**

IN THE MATTER OF:

FRANCISCO JOSE LISBOA & ORS. ...APPELLANTS
VERSUS

GOA COASTAL ZONE MANAGEMENT
AUTHORITY & OTHERS ...RESPONDENTS

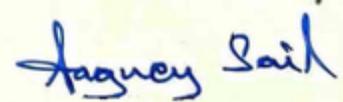
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**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

APPEAL No. 05 of 2019 (WZ)

IN THE MATTER OF:

FRANCISCO JOSE LISBOA & ORS. ...APPELLANTS

VERSUS

GOA COASTAL ZONE MANAGEMENT

AUTHORITY & OTHERS ...RESPONDENTS

**REPLY OF RESPONDENTS NO. 2, 3 & 4
OF THE APPEAL**

1. That the present Appeal is pending adjudication before this Hon'ble Tribunal. The present Reply is being filed jointly by Respondents No. 2 to 4 ('answering respondents' for short) to oppose the reliefs sought by the Appellant in the above-mentioned Appeal. Nothing in the present reply may be treated to be an admission of the contents of the Appeal, unless the same is expressly and categorically admitted herein.

PRELIMINARY OBJECTIONS:

2. That the answering respondents raise the following preliminary objections with a prayer that these be decided at the preliminary stage itself as the same are detrimental to the maintainability of the present Appeal:

(i) APPEAL IS BARRED BY RES JUDICATA:

It is submitted that Writ Petition No. 1077/2018 was filed in the High Court of Bombay at Goa, by Kashinath Jairam Shetye (Respondent No. 5 herein). That Appellant No. 1 was arrayed as Respondent No. 5 in the WP No. 1077/2018 and was represented by counsel during the hearing on 27.11.2018, meaning thereby that Appellants through Appellant No. 1 knew of the said W.P. No. 1077/2018. The High Court granted liberty to the Petitioner (Respondent No. 5 herein) to avail the alternate remedy of approaching this Hon'ble Tribunal. Pursuant to this liberty Kashinath Jairam Shetye filed Appeal No. 06/2019 (WZ) before this Hon'ble Tribunal challenging the impugned order dated 22.10.2018 which was dismissed in-limine by this Hon'ble Tribunal vide its order dated 29.07.2020. A true and correct copy of the High Court order dated 27.11.2018 is **ANNEXURE - R2/1** and order 29.07.2020 passed in Appeal No. 06/2019 (WZ) is hereto marked and annexed as **ANNEXURE - R2/2**.

Hence, it is submitted that the present Appeal challenging the same order dated 22.10.2018 is barred by the principle of res judicata and/or constructive res judicata. In this regard, it is submitted that answering

respondents were never issued notices or they never received notices from this Hon'ble Tribunal in Appeal No. 06/2019(WZ) and only came to know of the same after its dismissal. Unfortunately, when the case details are searched by giving the Appeal No. on the website of this Hon'ble Tribunal, it displays a message to go to the old website of this Hon'ble Tribunal which is not opening. Hence, this Hon'ble Tribunal is most humbly requested to direct that the entire record of the Appeal No. 06/2019 (WZ) be called for and brought on record in the present Appeal to adjudicate on the question of bar of res judicata.

(ii) **APPEAL IS BARRED BY LIMITATION:**

The present Appeal was filed on 06.12.2018 and there is no "Application for condonation of delay" that has been filed by the Appellants for the delay of about 15 days starting from 21.11.2018 when the statutory period of 30 days expired. The statement (made in para 31 of the Appeal) that the Appellants received the copy of the impugned order on 26.10.2018 in absence of annexing to the present Appeal, the postal envelope received by them from GCZMA showing the mode of sending and postal tracking report showing date of delivery, deserves to be rejected. The

contentions regarding limitation made in paragraph 19 of this rejoinder may be reiterated herein. Hence, the present Appeal is barred by limitation and deserves to be rejected by this Hon'ble Tribunal.

PRELIMINARY SUBMISSIONS:

3. That the answering respondents are in possession of the structure (ground floor only) / house consisting of only one room having an area of less than 25 sq. m. existing prior to 1991 in Survey No. 25/6 of Village Assagoa. The Respondent No. 4 has been declared the 'mundkar' (a person who works in the property of another, plants trees, raises plantations and protects it) as per the Goa, Daman & Diu Mundkars (Protection from Eviction) Act, 1975 ('Mundkar Act, 1975' for short) through her mother Smt. Kesari Gunaji Sirsaikar, who was staying at the said structure since 1948. It is pertinent to mention that to be declared a mundkar, who is lawfully residing in a dwelling house it is mandatory as per Sections 2(i) and 2(p) of the Mundkar Act, 1975 such person should be residing in the dwelling house prior to 12.03.1975. Hence, being declared a mundkar with respect to the hut in Sy. No. 25/6 of Village Assagao means that the said hut was in existence at least

on 12.03.1975 and was occupied by the said mundkar. The said structure / house has never been used for commercial purposes. The answering respondents belong to the Kharvi traditional coastal community and Respondent No. 4 (who is a senior citizen now) at the relevant time was a seagoing fisherman and Respondent No. 2 is a seagoing fisherman having a fishing trawler. A true and correct copy of the Mundkar Act, 1975 along with its Rules is hereto marked and annexed as **ANNEXURE – R2/3**.

4. That it is pertinent to mention that the present Appeal in concerning the issue of regularisation and repair / reconstruction / construction of existing authorized structure / dwelling units of traditional coastal communities (especially fisherfolk, tribals) which existed prior to 1991. The relevant sections of the CRZ Notification, 1991 and CRZ Notification, 2011 are given below for ready reference of this Hon'ble Tribunal:

SECTION	CRZ NOTIFICATION, 1991
ANNEXURE-I	6(2) Norms for Regulation of Activities: The development or construction activities in different categories of CRZ areas shall be regulated by the concerned authorities at the State/Union Territory level, in accordance with the following norms:

	<p>CRZ III:-</p> <p>(i) The area upto 200 metres from the High Tide Line is to be earmarked as 'No Development Zone' [provided that such area does not fall within any notified port limits or any notified Special Economic Zone]. No construction shall be permitted within this zone <u>except for repairs of existing authorised structures not exceeding existing FSI, existing plinth area and existing density,</u> and for permissible activities under the notification including facilities essential for such activities.</p>
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SECTION	CRZ NOTIFICATION, 2011
3(i)(e)	<p>3. Prohibited activities within CRZ,- The following are declared as prohibited activities within the CRZ,-</p> <p>(i) Setting up of new industries and expansion of existing industries except,-</p> <p>(e) <u>reconstruction, repair works</u> of dwelling units of local communities including fishers in accordance with local town and country planning regulations.</p>
6(d)	<p>6. Enforcement of the CRZ, notification, 2011-</p> <p>(d) The dwelling units of the traditional coastal communities [especially]¹ fisherfolk, tribals as were permissible under the provisions of the CRZ notification, 1991, but which have not obtained formal approval from concerned authorities under the aforesaid notification shall be considered by the respective Union territory CZMAs and the dwelling units shall be regularized subject to the following condition, namely-</p> <p>(i) these are not used for any commercial activity</p> <p>(ii) these are not sold or transferred to non-traditional coastal community.</p>

	<p>1. This word substituted by corrigendum S.O.651(E) dt. 29.03.11 for the word 'including'.</p>
8(i)(III)(A)(ii)	<p>8. Norms for regulation of activities permissible under this notification,-</p> <p>(i) The development or construction activities in different categories of CRZ shall be regulated by the concerned CZMA in accordance with the following norms, namely:-</p> <p>Note:- The word existing use hereinafter in relation to existence of various features or existence of regularisation or norms shall mean existence of these features or regularisation or norms as on 19.2.1991 wherein CRZ notification, was notified.</p> <p>I. ...</p> <p>II. ...</p> <p>III. CRZ-III,-</p> <p>A. Area upto 200mts from HTL on the landward side in case of seafront and 100mts along tidal influenced water bodies or width of the creek whichever is less is to be earmarked as "No Development Zone (NDZ)",-</p> <p>(i) ...</p> <p>(ii) No construction shall be permitted within NDZ except for repairs or reconstruction of existing authorized structure not exceeding existing Floor Space Index, existing plinth area and existing density and for permissible activities under the notification including facilities essential for activities; Construction/reconstruction of dwelling units of traditional coastal communities [especially]¹ fisherfolk may be permitted between 100 and 200 metres from the HTL along the seafront in accordance with a comprehensive plan prepared by the State Government or the Union territory in consultation with the traditional coastal communities</p>

	<p>[especially]¹ fisherfolk and incorporating the necessary disaster management provision, sanitation and recommended by the concerned State or the Union territory CZMA to NCZMA for approval by MoEF;</p> <p><i>1. These words substituted by corrigendum S.O.651(E) dt. 29.03.11 for the word 'including'.</i></p>
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5. That it is pertinent to mention that GCZMA has referred / relied on the following documents in the present case to conclude that the structure existed prior to 1991, leading to the impugned order dated 22.10.2018:

S. No.	DATE	DOCUMENT (Structure existed prior to 1991)
1.	04.06.97	Certificate of Village Panchayat Assagao to the effect that the hut belonging to mother of Respondent No. 4 existed in Sy. No. 25/6 as per Survey Record (survey was conducted in 1972).
2.	27.02.09	Ex-post facto approval of GCZMA granted for repair/renovation which was given after site inspection conducted on 14.01.09 by its member who noted that old survey plan (1972) shows small existing structure.
3.	26.03.10	Report of Dy. Collector & SDO Bardez which found that there was a structure admeasuring 25 Sq. mts. in Survey No. 25/6 of village Assagao as on 1972 which is reflected in the Survey Plan.
4.	17.12.12	GCZMA Order reviving the ex-post facto approval dated 27.02.09 on the basis of report of Dy. Collector & SDO Bardez dt. 26.03.10.

5.	12.02.13	Survey Plan of DSLR.
6.	08.03.16	Order passed by Dy. Collector of Bardez declaring Respondent No. 4 as 'mundkar' of the said structure through his mother relying, inter alia, on her application of 1978 to declare her as a mundkar of Joseph Francisco Lisbon from last 30 years staying at the said property, village panchayat resolution to release water and electricity connection to the suit house etc. <i>To be declared a mundkar lawfully residing in a dwelling house it is mandatory as per Section 2(p) of the Mundkar Act, 1975 such person should be residing in it prior to 12.03.1975.</i>

PARAWISE REPLY:

6. REPLY TO PARA 1: The contents of this paragraph are denied.

7. REPLY TO PARA 2: The contents of this paragraph are denied being wrong appreciation of the law.

- It is submitted that the Goa Coastal Zone Management Authority (GCZMA for short) reviewed its own orders, which was not suo-motto (inherent review) but on express directions issued by this Hon'ble Tribunal vide order dated 04.10.2018 passed in Appeal No. 231/2018 (WZ) filed by the answering respondents.
- It is also denied that Appellants were not heard by GCZMA before passing of the impugned order dated 22.10.2018. In this regard it is submitted that Appellants through their power-of-attorney holder Mr. Rajan S. Ghate were heard by GCZMA right

from the beginning of the proceedings before GCZMA and this Hon'ble Tribunal. GCZMA notice dated 05.10.2018 for personal hearing on 12.10.18 was sent to AR of Appellants i.e. Rajan Ghate. However, despite this Appellants or their AR was present before GCZMA on 12.10.18 for the hearing. True and correct copy of the GCZMA personal hearing notice dated 05.10.18 is hereto marked and annexed as **ANNEXURE – R2/4**.

- Earlier ex-post facto approvals dated 27.02.2009 and dated 17.12.2012 for reconstruction / repair / renovation of existing structure in Sy. No. 25/6 of Village Assagao were granted by GCZMA under Section 3(i)(e), 6(d) and 8(III)(A)(ii) of the CRZ Notification, 2011.

8. REPLY TO PARA 3: The contents of this paragraph are denied as being irrelevant to the present Appeal, inasmuch as, the ownership of land is not to be decided by GCZMA. It is pertinent to mention that the answering respondents came into possession of the said hut in Sy. No. 25/6 through Smt. Kesari Gunaji Sirsaikar who was the the mother of Respondent No. 4 and grandmother of Respondent Nos. 2 & 3. Smt. Keasari Gunaji Sirsaikar was declared 'mundkar' of Appellants and through her Respondent No. 4 was also declared a 'mundkar' of Appellants as per the judgment dated 08.03.2016 passed in Appeal No. 46/2002 by Dy. Collector & SDO, Mapusa Sub-division, Goa under section 24 of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 which

has attained finality. True and correct copy of the judgment dated 08.03.2016 passed in Appeal No. 46/2002 by Dy. Collector & SDO, Mapusa Sub-division, Goa is hereto marked and annexed as **ANNEXURE – R2/5**.

9. REPLY TO PARA 4: The contents of this paragraph are denied as being false and the Appellants be put to strict proof of the same. It is specifically denied that answering respondents no. 2 to 4 are not the legal heirs of Smt. Kesari Gunaji Sirsaikar. In this regard it is submitted that the Respondent No. 4 was also declared as a 'mundkar' of Appellants by virtue of being the son of Smt. Kesari Gunaji Sirsaikar by the competent authority in law, which judgment dated 08.03.2016 has attained finality not being challenged by the Appellants.
10. REPLY TO PARA 5: The contents of this paragraph are denied as being incomplete and vague. It is submitted that there is no illegal construction that has been carried out in the said hut located in Sy. No. 25/6 of Village Assagao by the answering respondents.

PROCEEDINGS UNDER GOA PANCHAYAT RAJ ACT,
1994: The demolition order cum notice dated

27.05.2010 passed by the Village Panchayat Assagao U/s 66(4) of the Goa Panchayat Raj Act, 1994 concerning the construction in Sy. No. 25/6 of Village Assagao has been quashed and held to be bad in law by judgment dated 29.09.2010 by the Additional Director of Panchayat in Panchayat Appeal No. 86/2010. This judgment dated 29.09.2010 has been upheld and maintained by the Adhoc District Judge, North Goa vide its judgment dated 30.11.2022 passed in Civil Revision Application No. 6/2013. True and correct copies of the judgment dated 29.09.2010 passed by the Additional Director of Panchayat in Panchayat Appeal No. 86/2010 and judgment dated 30.11.2022 in Civil Revision Application No. 6/2013 are hereto marked and annexed as **ANNEXURE - R2/6(colly)**.

11. REPLY TO PARAs 6 to 13: The contents of these paragraphs are denied completely as being irrelevant to the present Appeal, inasmuch as, GCZMA conducted site inspections of the said site on 14.01.2009 by its Member and thereafter granted ex-post facto approval for repair / renovation of the existing structure at vide its letter dated 27.02.2009.

The Appellants have referred and/or relied upon the following documents in these paragraphs:

S. No.	DATE	DOCUMENT DESCRIPTION
1.	15.11.96	Town & Country Planning Dept. letter to Village Panchayat Assagao – Not to carry out any repair/reconstruction without approval from Goa State Committee for Coastal Environment (GSCCE) to whom the case is referred to.
2.	27.11.96	Village Panchayat Assagao letter to Respondent No. 4 informing about TCP letter dt. 15.11.96 and directing no repair/reconstruction till approval of GSCCE.
3.	15.04.97	TCP letter to Village Panchayat Assagao about application for reconstruction of existing room to 5x5 mts. which has been referred to GSCCE for approval and complaint of Mrs. Cecilia Lisboa.
4.	11.06.98	Sr. Town Planner letter to Village Panchayat Assagao to take necessary action on complaint of Krishna Ghate.
5.	24.07.98	Panchanama of inspection of Sy. No. 25/6 in Village Assagao by Sarpanch and others.
6.	21.08.02	Village Panchayat Assagao letter to Respondent No. 4 to submit mentioned documents to GCZMA.
7.	27.05.10	Demolition notice-cum-order of Village Panchayat Assagao issued to Respondent No. 4 w.r.t. structure at Sy. No. 25/6.

The GCZMA ex-post facto approval dt. 27.02.09, though kept in abeyance, was revived vide GCZMA order dated 17.12.2012 which was passed after taking into consideration the report (sought specifically by GCZMA) dated 26.03.2010 of the Dy. Collector & SDO (Bardez) which stated that,

"From the records produced in the file it is ample clear that there was a structure admeasuring 25 Sq. mts. in Survey No. 25/6 of village Assagao as on 1972 which is reflected in Survey Plan however as regards to the ownership of the said structure the same is under challenge and hence this office cannot comment on the ownership."

True and correct copies of the GCZMA ex-post facto approvals dated 27.02.2009 and 28.04.2009 (rectified) is **ANNEXURE - R2/7(colly)**, Report dated 26.03.2010 of the Dy. Collector & SDO (Bardez) is **ANNEXURE - R2/8** and the GCZMA ex-post facto approval dated 17.12.2012 is **ANNEXURE - R2/9**. These ex-post facto approvals dated 27.02.2009 and dated 17.12.2012 for reconstruction / repair / renovation of existing structure in Sy. No. 25/6 of Village Assagao were granted by GCZMA under Section 6(2)(CRZ-III)(i) of the CRZ Notification, 1991 and Sections 3(i)(e), 6(d) and

8(III)(A)(ii) of the CRZ Notification, 2011 which specifically provide not only for repairs but construction / re-construction of existing structure and/or dwelling units of traditional coastal communities (especially fisherfolk – Respondent No. 4 at the relevant time was a seagoing fisherman and Respondent No. 2 is a seagoing fisherman having a fishing trawler). The Appellants are trying to revive the already settled issue of the structure at Sy. No. 25/6 of Village Assagoa existing prior to 1991 through reference to documents (for the first time) before the GCZMA ex-post facto approval given in 2012 which documents have not been referred to or relied upon by the Appellants during the proceedings before GCZMA.

12. REPLY TO PARA 14: The contents of this paragraph are vehemently denied as being wrong representation of the facts. It is submitted that the issue of whether Respondent No. 4 is a mundkar with respect to the hut located in Sy. No. 25/6 of Village Assagao has been decided by Dy. Collector vide judgment dated 08.03.2016 passed in Appeal No. 46/2002 preferred by Respondent No. 4 U/s 24

of the Mundkar Act, 1975 wherein the Appellants No. 1 & 3 herein were the Respondent Nos. 2 & 3 respectively. This judgment dated 08.03.2016 has attained finality as the same has not been challenged in Revision before the Administrative Tribunal as provided under Section 25 of the Mundkar Act, 1975.

13. REPLY TO PARAs 15 & 16: The contents of these paragraphs are denied completely as being false and the Appellants be put to strict proof of the same. It is submitted that Appellants had filed a representation and a letter dated 12.07.2011 with GCZMA after their first approval dt. 27.02.2009 was granted, through one Mr. Krishna Savlo Ghate. It is pertinent to mention that this same person i.e. Mr. Krishna Savlo Ghate was the power of attorney holder for Appellants (mainly Appellants No. 1 & 3) before the Dy. Collector in the Appellate proceedings (which were between 2002 to 2016) with respect to the issue of Respondent No. 4 being declared a mundkar.
14. REPLY TO PARA 17: The contents of this paragraph are denied as being wrong appreciation of the CRZ Notification, 2011. It is submitted that ex-post facto approvals dated

27.02.2009 and dated 17.12.2012 for reconstruction / repair / renovation of existing structure in Sy. No. 25/6 of Village Assagao were granted by GCZMA under Section 3(i)(e), 6(d) and 8(III)(A)(ii) of the CRZ Notification, 2011 which expressly provide for the same. It is also clarified that the Appellants contention that the regularisation and repair / reconstruction / construction of the hut in Sy. No. 25/6 is a 'project' is misplaced and wrong application of the law. Far from being a project it is nothing but a case of regularisation and repair/reconstruction of dwelling unit of traditional coastal community which is expressly provided for in the CRZ Notification, 2011.

15. REPLY TO PARA 18: That the contents of this paragraph are vehemently denied as being false and misconceived interpretation of the law. It is submitted that Appellants have deliberately chosen not to bring on record the complaint dated 12.01.2015 filed by them through their constituted Attorney and hence, may be put to strict proof in this regard. In addition, it is denied as wrong and false statement that the Appellants did not have knowledge of the GCZMA ex-post facto approvals dated 27.02.09 and

17.12.12 as explained in paragraph no. 12 of this rejoinder which may kindly be read in response here also.

16. REPLY TO PARAs 19, 20 & 21: The contents of these paragraphs are denied as incomplete or one sided representation of the facts of the case. In response it is submitted that the statement of facts as provided in the Appeal No. 231/2018 filed by answering respondents, the minutes of the 186th meeting of the GCZMA and the agenda to the 186th meeting of the GCZMA are relied upon. The answering respondents had submitted written representation to the GCZMA on 29.01.2018 wherein the Form I & XIV of the Sy. No. 25/6 along with Survey Plan were brought on record. True and correct copies of the relevant extracts of the minutes and agenda of the 186th GCZMA meeting held on 12.10.2018 downloaded from GCZMA website along with representation dated 29.01.2018 and its annexures are hereto marked and annexed as **ANNEXURE – R2/10(colly)**.

17. REPLY TO PARA 22: The contents of this paragraph are denied completely as being false and misrepresentation of facts. It is submitted that the answering respondents had

filed Appeal No. 231/2018 before this Hon'ble Tribunal challenging the orders dated 20.09.2018 and 28.03.2018 wherein the Appellants were made party Respondent No. 6 through their appointed Attorney Mr. Rajan Savllo Ghate. True and correct copy of the Appeal No. 231/2018 including its Index, Synopsis, List of Dates and Appeal Memo are hereto marked and annexed as **ANNEXURE – R2/11**. This Hon'ble Tribunal vide its order dated 04.10.2018 did not issue notice in the Appeal No. 231/2018 but instead directed the GCZMA to give a fresh hearing on the matter. True and correct copies of the orders dated 04.10.2018 and 23.10.2018 passed in Appeal No. 231/2018 and order dated 01.10.2018 passed in Appeal No. 195/2018 (WZ) by this Hon'ble Tribunal are hereto marked and annexed as **ANNEXURE – R2/12(colly)**.

18. REPLY TO PARAs No. 23, 24 & 25: The contents of these paragraphs are vehemently denied as being false and incomplete presentation of the facts to favour the Appellants. The fact of the matter is that GCZMA notice dated 05.10.2018 for personal hearing on 12.10.18 was issued to all the concerned parties including that constituted Attorney of Appellants i.e. Rajan Ghate. This is

evident from the notice itself wherein it records names and addresses of a total of six persons to whom it was issued. The appointed attorney of Appellants Mr. Rajan Ghate is mentioned at serial no. 5 of this list and at serial no. 4 is Mr. Kashinath Jairam Shetye (Respondent No. 5 herein) who is the second complainant in the proceedings before GCZMA. However, despite notice of personal hearing the Appellants or their attorney remained absent (rather did not appear by choice) before GCZMA on 12.10.18 for the hearing. Hence, an adverse inference has to be drawn against the Appellants. True and correct copy of the GCZMA personal hearing notice dated 05.10.18 is ANNEXURE-R2/2 of this Rejoinder.

19. REPLY TO PARAs No. 26, 27 & 31: The contents of these three paragraphs are denied being false and not giving the complete narration of facts.

- The statement (made in para 31) that the Appellants received the copy of the impugned order on 26.10.2018 in absence of annexing to the present Appeal, the postal envelope received by them showing the mode of sending and postal tracking report showing date of delivery, deserves to be rejected. In response, it is submitted that the present Appeal was filed on 06.12.2018 and there is no "Application for condonation of delay" that has been filed by the Appellants for the delay of about

15 days starting from 21.11.2018 when the statutory period of 30 days expired.

- The contention of the Appellants made in paragraph no. 31 that High Court vide order dated 27.11.2018 granted liberty to them and hence the Appeal is within the prescribed period of limitation is completely wrong appreciation of the High Court order. It is submitted that Writ Petition No. 1077/2018 was filed by Kashinath Jairam Shetye and not by the Appellants herein. Appellant No. 1 was arrayed as Respondent No. 5 in the WP No. 1077/2018 and was represented by counsel during the hearing on 27.11.2018. The High Court did not grant liberty to the Appellants to avail the alternate remedy of approaching this Hon'ble Tribunal but this liberty was granted to the Petitioner i.e. Kashinath Jairam Shetye. Pursuant to this liberty Kashinath Jairam Shetye filed Appeal No. 06/2019 (WZ) challenging the impugned order dated 22.10.2018 which was dismissed in-limine by this Hon'ble Tribunal vide its order dated 29.07.2020. A true and correct copy of the order dated 29.07.2020 in Appeal No. 06/2019 (WZ) is hereto marked and annexed as ANNEXURE - R2/2.
- It is pertinent to mention that the Appellants (through their appointed attorneys) are chronic litigants who have been pursuing this matter in various Courts/Tribunals/Statutory forums like the Civil Revision Application No. 06/2013 preferred by them before the District Judge, North Goa challenging the Appellate order of Additional Director of Panchayat which stayed the demolition order of the said structure. In fact, it is not out of place to mention that the Appellants after filing the present Appeal on 06.12.2018 chose not to pursue it till December, 2022 as on 30.11.2022 their Civil Revision Application No. 06/2013 came to be dismissed and they lost. The Appellants are by no

means persons with insufficient means who cannot engage a competent counsel. Hence, it is submitted that the present Appeal which is barred by limitation of about 15 days, in absence of any condonation of delay application, deserves to be dismissed by this Hon'ble Tribunal.

20. REPLY TO PARA 28 (GROUNDS): In response to this paragraph it is submitted that no liberty was granted by the High Court to the Appellants, as pointed out earlier in para 19 of this rejoinder.

21. REPLY TO PARA 28(a): The impugned order dated 22.10.2018 passed by GCZMA is a well reasoned order which has been passed after giving ample opportunities to both the complainants, i.e. Kashinath Jairam Shetye and Rajan Savllo Ghate who is the appointed attorney of the Appellants. The GCZMA notice dated 05.10.2018 for personal hearing on 12.10.18 was issued to all the concerned parties including that constituted Attorney of Appellants i.e. Rajan Ghate. This is evident from the notice itself wherein it records names and addresses of a total of six persons to whom it was issued. The appointed attorney of Appellants Mr. Rajan Ghate is mentioned at serial no. 5 of this list and at serial no. 4 is Mr. Kashinath Jairam Shetye (Respondent No. 5 herein) who is the second complainant

in the proceedings before GCZMA. However, despite notice of personal hearing the Appellants or their attorney remained absent (rather did not appear by choice) before GCZMA on 12.10.18 for the hearing. Hence, an adverse inference has to be drawn against the Appellants. True and correct copy of the GCZMA personal hearing notice dated 05.10.18 received by the answering respondents is ANNEXURE-R2/2 of this Rejoinder.

22. REPLY TO PARA 28(b): The impugned order dated 22.10.2018 does not suffer from violation of principles of natural justice and is not void ab-initio. As pointed out in the above paragraph, a notice of personal hearing dated 05.10.2018 was issued to the appointed Attorney of the Appellants, which stated that,

"NOW THEREFORE, you are hereby required to remain present for the personal hearing or depute your duly authorized representative with all the documents, approved site plans and other related documents if any in support of your case/ structure before the Authority, 2nd floor, Conference Hall, Secretariat, Porvorim-Goa on the scheduled date, failing which the Authority shall proceed exparte in the matter."

Secondly, the notice for personal hearing dated 05.10.2018 was exhaustive issued in reference of eighteen (18) documents starting from the complaint letter dated 12.01.2015 from Mr. Rajan Ghate to the latest order dated 01.10.2018 passed in Appeal No. 23/2018 (WZ) by this Hon'ble Tribunal. Hence, an unambiguous and precise notice of personal hearing was given a week before the GCZMA hearing was scheduled giving ample time to prepare and produce documents in support of one's case.

23. REPLY TO PARA 28(c): The contents of this paragraph are denied as completely wrong as notice of personal hearing was issued to the Appellants as point out above. Moreover, it is submitted that Appellants through their power-of-attorney holder Mr. Rajan S. Ghate were heard by GCZMA right from the beginning of the proceedings before GCZMA.
24. REPLY TO PARA 28(d): In response to this paragraph it is submitted that a party who has been served with a notice of personal hearing and choses not to appear cannot claim violation of principles of natural justice.

25. REPLY TO PARA 28(e): In response to the contention that GCZMA exceeded its scope and power in passing the impugned order it is submitted that GCZMA re-heard the case, which was not suo-motto (inherent review) but on express directions issued by this Hon'ble Tribunal vide order dated 04.10.2018 passed in Appeal No. 231/2018 (WZ) filed by the answering respondents, which directed that,

"1. It is stated that the present appeal is identical to the matter dealt with by this Tribunal vide order dated 01.10.2018 in Appeal No. 195/2018 in the matter of Sagardeep Sirsaikar & Ors. Vs. Goa Coastal Zone Management Authority & Ors.

2. In view of above, we direct that the present appeal will also be covered by the said order to the extent applicable and the appellant may appear before the Goa Coastal Zone Management Authority (GCZMA) for the purpose on 09.10.2018 at 11:00 a.m. ..."

This Hon'ble Tribunal in order dated 01.10.2018 passed in Appeal No. 195/2018 had directed that,

"8. With a view to examine the matter further we direct the GCZMA to hear the appellants and consider the documents relied upon and send a report in the matter to this Tribunal before the next date. The appellants may appear before the authority for the purpose on 09.10.2018."

It is submitted that the direction given to the GCZMA by this Hon'ble Tribunal was to hear the Appellants in Appeal No. 231.2018 (WZ) who are the answering respondents herein and consider the documents relied upon by them.

Further, this Hon'ble Tribunal had directed the Appellants (answering respondents herein) that they may appear before GCZMA on 09.10.2018 at 11am for a hearing. Hence, it is pertinent to point out that, in light of the direction of this Hon'ble Tribunal as quoted above, there was no need for GCZMA to issue notice of personal hearing to all the concerned parties i.e. the complainants as only the answering respondents were directed to be heard. The fairness and equity shown by GCZMA in hearing all the parties concerned by issuing notice of personal hearing deserves appreciation in the present case.

26. REPLY TO PARA 28(f): The contention that it is beyond the scope and ambit of powers of GCZMA to quash its own order and discharge the proceedings is completely misplaced. In the present case, this Hon'ble Tribunal had directed vide its order dated 04.10.18 in Appeal No. 231/2018 (WZ) a personal hearing to be conducted by GCZMA of the answering respondents wherein the documents submitted will be considered and a report was to be given to this Hon'ble Tribunal. The effect of this order was that the GCZMA's orders dated 20.09.18 and 28.03.18 were in essence set aside and the GCZMA was directed to

decide afresh the matter after hearing the parties and submit its report. This is substantiated by the subsequent order dated 23.10.18 passed in Appeal Nos. 231/2018 (WZ) & 195/2018 (WZ) which states that,

"In furtherance to order of this Tribunal dated 01.08.2018, the Goa Coastal Zone Management Authority (GCZMA) has heard the appellants, considered the documents and recorded the proceedings in its minutes of 186th meeting held on 12.10.2018.

In view of the above development, since the GCZMA has initiated fresh consideration, the appeals have become infructuous unless the appellants are aggrieved by the order which may be now passed. The original impugned orders no longer survive. The appeals will stand disposed of so that the GCZMA may take further action in terms of the minutes of the above meeting."

True and correct copy of the order dated 23.10.18 is ANNEXURE R2/12 to this Rejoinder.

27. REPLY TO PARA 28(g): The contentions made that GCZMA has acted in a biased manner (without following due process of law and not considering the correct factual position) supporting the answering respondents is mere bald and vague statement not supported by specific instances and documentary evidence. Hence, the same deserve to be rejected by this Hon'ble Tribunal for lack of proper pleadings.

28. REPLY TO PARA 28(h): The contentions made in this ground are again vague and deserve to be rejected for want of specific pleadings. However, in response it is submitted that, the approval of 2009 was kept in abeyance from 05.08.09 till 17.12.12 when after conducting enquiry afresh and on the report of Dy. Collector & SDO (Bardez) an order granting ex-post facto approval by reviving the earlier approval of 2009 was passed by GCZMA. It is submitted that GCZMA issued approvals U/s 6(d) of the CRZ Notification, 2011 read with Sections 3(1)(e) and 8(i)(III)(A)(ii) of the CRZ Notification, 2011.
29. REPLY TO PARA 28(i): The contentions raised in this Ground relate to the violation of principles of natural justice which have been taken earlier grounds. The response given in paragraphs 21 to 24 on how principles of natural justice have been complied with by GCZMA may kindly be read in response to the present ground.
30. REPLY TO PARA 28(j): The contentions that answering respondents misled, misrepresented and relied on manipulated documents is vehemently denied and it is submitted that even now the Appellants have failed to

specifically point out the manipulations, misrepresentations etc. allegedly done by the answering respondents thereby rendering this ground a mere bald statement filled with vague pleadings. Hence, the same deserves to be rejected by this Hon'ble Tribunal.

31. REPLY TO PARA 28(k): The contention that GCZMA has erroneously come to the finding that the house existed prior to 1991 is again a mere bald statement which is vague and not supported by any specific contention / pleadings pointing out the error committed by GCZMA. As pointed out throughout this rejoinder the impugned order dated 22.10.2018 of GCZMA is based on findings arrived at by government officials and their reports and also is based of judgments passed by statutory authorities and documentary evidence which have not been controverted. Hence, the same deserves to be rejected by this Hon'ble Tribunal.

32. REPLY TO PARA 28(l): The contention that GCZMA has not considered the documents in its true and correct perspective while passing the impugned order dated 22.10.2018 is again a mere bald and vague statement

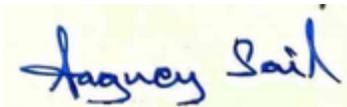
which is not giving any details or specifics about the true and correct perspective of which documents that was not considered by GCZMA. For want of specific pleadings / details this ground also deserves to be rejected by this Hon'ble Tribunal.

33. REPLY TO PARA 28(m): The prayer that Appellants may be permitted to raise other grounds at the time of hearing deserves to be rejected as so far there is not a single ground that has been pleading in their Appeal which is substantiated with evidence and specific pleadings.
34. REPLY TO PARA 29: The prayer of interim relief sought in this paragraph deserves to be rejected as balance of convenience is in favour of the answering respondents and also because the Appellants stand to lose nothing if the impugned order is stayed, however, the answering respondents will suffer grave and irreparable injury if the impugned order is stayed which means that their hut at Survey No. 25/6 in Village Assagao will face demolition. Hence, this interim relief of stay deserves to be rejected by this Hon'ble Tribunal.

35. REPLY TO PARA 30: The contention that Appellants have a strong prima facie case in their favour as GCZMA does not have any power to quash its own order is heavily misplaced and deserves to be rejected. It is similar to the grounds taken by them and in response paragraphs no. 25 & 26 of present rejoinder are reiterated herein with leave of this Hon'ble Tribunal.
36. REPLY TO PARAs 32 to 35: These paragraph need no response from the answering respondents.
37. REPLY TO PARA 36 (PRAYERS): In light of the various contentions and facts submitted in the present Rejoinder, the prayers sought by the Appellants deserve to be rejected and the impugned order dated 22.10.2018 passed by GCZMA upheld by this Hon'ble Tribunal.

RESPONDENT NOs. 2, 3 & 4

THROUGH



AAGNEY SAIL

ADVOCATE FOR THE RESPONDENT NOs. 2, 3 & 4

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Bilaspur, Chhattisgarh – 495220.

Ph. +91.9810076618.

Email: aagneysail@gmail.com

Filed on: 24.08.2023

Place: Goa



**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE
APPEAL No. 05 of 2019 (WZ)**

IN THE MATTER OF:

FRANCISCO JOSE LISBOA & ORS.

...APPELLANTS

VERSUS

GOA COASTAL ZONE MANAGEMENT
AUTHORITY & OTHERS

...RESPONDENTS

AFFIDAVIT

I, Sagardeep Sirsaikar, S/o Audumber Sirsaikar, aged about 46 years, R/o H. No. 308, Chapora, Dabolwado, Anjuna, Bardez, Goa - 403509, do hereby solemnly state and affirm that:

1. That I am the abovementioned Respondent No. 2 and I am aware of the present case and as such am competent to swear this affidavit on my behalf and also on behalf of Respondent Nos. 3 & 4.
2. That I have understood the accompanying Reply to Appeal which has been drafted on my instructions and its content read over and explained to me. I say that the facts stated therein are true to my knowledge, belief and legal advice.
3. That the Annexures R2/1 to R2/ of the Reply are true and correct copy of their respective originals.

DEPONENT

VERIFICATION:

Verified that the contents of paragraph 1 to 3 of my above affidavit which have been read over and explained to me in the vernacular are true to my knowledge & belief, no part of it is false and nothing material has been concealed therefrom.

Verified on _____ of August, 2023 at _____.

DEPONENT



SOLENNY AFFIRMED BEFORE ME
 BY Mr. Sagardoop Suisaiker
 WHO IS IDENTIFIED BEFORE ME
 BY Accellon Card no. 4630 1516 -
REG NO 4029/2-23 7363
 Dated: 11/8/23

Kavita
 KAVITA P. KAREKAR
 NOTARY FOR
 ENTIRE STATE OF GOA (INDIA)

ANNEXURE - R2/1**IN THE HIGH COURT OF BOMBAY AT GOA**

WRIT PETITION NO. 1077 OF 2018

KASHINATH JAIRAM SHETYE AND ANR., ... Petitioners

Versus

THE MEMBER SECRETARY, GCZMA AND 4
ORS., ... Respondents

Petitioner no.1 present in person.

Mr. D.Shirodkar, Addl. Govt. Advocate for Respondent no.1.

Mr. V. Amonkar, Advocate for the respondent no.5

Mr. J.Lobo, Advocate for the respondent nos.2 to 4.

Coram:- R. M. BORDE &
PRITHVIRAJ K. CHAVAN, JJ.Date:- 27th November 2018

P.C.

Petitioner no.1/party in person is raising challenge to the various orders passed by the Goa Coastal Zone Management Authority. It would be open for the petitioner to avail of an alternate remedy of approaching the National Green Tribunal for redressal of his grievance and for challenging these orders impugned in this petition.

2. Without going into the merits of the controversy raised in this petition, petition stands disposed of with liberty to the petitioner to avail of the alternate remedy of approaching National Green Tribunal for redressal of his grievance. It is open for the parties affected to raise their contention in the

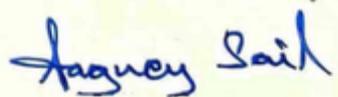
proceedings that would be initiated before the National Green Tribunal.

3. In view of the liberty granted above, writ petition stands disposed of.

PRITHVIRAJ K. CHAVAN, J.

R. M. BORDE, J.

vn



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ANNEXURE - R2/2

Item No. 2 (Pune Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(Through Video Conferencing)

Appeal No. 06/2019 (WZ)

Kashinath Shetye & Ors.

Appellant(s)

Versus

GCZMA & Ors.

Respondent(s)

Date of hearing: 29.07.2020

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER**

For Appellant (s) : None

For Respondent(s) :

ORDER

1. This appeal has been filed with the following reliefs:

1. *Whether the GCZMA has powers to quash their own orders?*
2. *Whether the Orders dated 22.10.2018 passed by the GCZMA quashing their Own demolition Order under section 5 of the EP Act passed by them on 28.03.2018 and reaffirming the same on 20.09.2018 is illegal?*
3. *Whether the orders dated 22.10.2018 passed by the GCZMA for re Inspection in their own demolition order under section 5 of the EP Act passed by them on 28.03.2018 and reaffirming the same on 20.09.2018 is illegal?*
4. *Whether the Order dated 23.10.2018 In the Appeal no. 195/2018, M.A. No. 1404 of 2018 in Appeal no 231 of 2018 M.A. no 1416 of 2018 of National Green Tribunal Delhi is in Violation of the Kerala High Court Judgement in Supra?*
5. *Whether the petitioners are entitled to relief sought?*

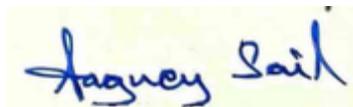
2. The relief as prayed is not maintainable before this Tribunal.

3. Accordingly, Appeal No. 06/2019 (WZ) is dismissed.

Sheo Kumar Singh, JM

Dr. Satyawan Singh Garbyal, EM

July 29, 2020
Appeal No. 06/2019 (WZ)
MN

A handwritten signature in blue ink on a yellow rectangular background. The signature reads "Jagney Sain".

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-- TRUE COPY --

ANNEXURE - R2/3

Manual of Goa Laws (Vol. III)

-221-

Mundkars (Protection from Eviction) Act & Rules

**The Goa, Daman and Diu Mundkars
(Protection from Eviction) Act, 1975 and
Rules, 1977**

The Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975

1. **The Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 (Act No. 1 of 1976) [10-02-1976]** published in the Official Gazette, Series I No. 46 (Extraordinary) dated 18-02-1976 and came into force w.e.f. 12-03-1976.
2. **The Goa, Daman and Diu Mundkars (Protection from Eviction) (Amendment) Act, 1976 (Act No. 1 of 1977) [10-01-1977]** published in the Official Gazette, Series I No. 44 dated 27-01-1977 and came into force at once.
3. **The Goa, Daman and Diu Mundkars (Protection from Eviction) (Amendment) Act, 1978 (Act No. 18 of 1978) [17-11-1978]** published in the Official Gazette, Series I No. 36 dated 07-12-1978 and came into force w.e.f. 12-03-1976.
4. **The Goa, Daman and Diu Mundkars (Protection from Eviction) (Amendment) Act, 1979 (Act No. 8 of 1979) [10-10-1979]** published in the Official Gazette, Series I No. 34 dated 22-11-1979 and came into force w.e.f. 12-03-1976.
5. **The Goa, Daman and Diu Mundkars (Protection from Eviction) (Amendment) Act, 1985 (Act No. 10 of 1985) [17-04-1985]** published in the Official Gazette, Series I No. 6 dated 09-05-1985 and came into force w.e.f. 12-03-1976.
6. **The Goa, Daman and Diu Mundkars (Protection from Eviction) (Amendment) Act, 1990 (Act No. 12 of 1990) [11-09-1990]** published in the Official Gazette, Series I No. 26 dated 26-9-90 and came into force at once.
7. **The Goa, Daman and Diu Mundkars (Protection from Eviction) (Amendment) Act, 1991 (Act No. 9 of 1991) [9-9-1991]** published in the Official Gazette, Series I No. 26 dated 26-09-1991 and came into force at once.
8. **The Goa, Daman and Diu Mundkars (Protection from Eviction) (Amendment) Act, 1992 (Act No. 2 of 1993) [06-03-1993]** published in the Official Gazette, Series I No. 2 dated 08-04-1993 and came into force at once.
9. **The Goa, Daman and Diu Mundkars (Protection from Eviction) (Amendment) Act, 1993 (Act No. 6 of 1995) [31-03-1995]** published in the Official Gazette, Series I No. 52 dated 31-03-1995 and deemed to have come into force w.e.f. 16-04-1993. *However Hon'ble High Court of Bombay at Goa in the Writ Petition No. 86 of 1997 by the Judgement dated 16th December, 2003, hold that the Act are ultravires Article 14 read with Article 13 (2) of the Constitution of India.*
10. **The Goa, Daman and Diu Mundkars (Protection from Eviction) (Amendment) Act, 1995 (Act No. 2 of 1996) [19-01-1996]** published in the Official Gazette, Series I No. 43 dated 29-01-1996 1995 and deemed to have come into force w.e.f. 27-09-1995. *However Hon'ble High Court of Bombay at Goa in the Writ Petition No. 86 of 1997 by the Judgement dated 16th December 2003 hold that the Act are ultravires Article 14 read with Article 13 (2) of the Constitution of India.*
11. **The Goa, Daman and Diu Mundkars (Protection from Eviction) (Amendment) Act, 1998 (Act No. 4 of 1998) [19-01-1998]** published in the Official Gazette, Series I No. 43 dated 22-01-1998 and came into force on the appointed date.
12. **The Goa, Daman and Diu Mundkars (Protection from Eviction) (Amendment) Act, 2000 (Act No. 41 of 2001) [21-05-2001]** published in the Official Gazette, Series I No. 9 dated 04-06-2001.

13. The Goa, Daman and Diu Mundkars (Protection from Eviction) (Amendment) Act, 2004 (Act No. 11 of 2005) [20-07-2005] published in the Official Gazette, Series I No. 18 dated 05-08-2005. The provisions related to the amendment in section 2 deemed to have come into force w.e.f. 27-09-1995 and Section 15 w.e.f. 16-04-1993.

14. The Goa, Daman and Diu Mundkars (Protection from Eviction) Rules, 1977 published in the Official Gazette, Series I No. 47 dated 23rd February, 1978.

Arrangement of Sections

1	Short title, extent and commencement	19	Bar to attachment, seizure or sale by process of court
2	Definitions	20	Commencement of proceedings
3	Rights of a mundkar to be heritable	21	Procedure
4	Bar to eviction from a dwelling house and restoration of possession	22	Execution of order for payment of money or restoring possession
5	Relief in certain cases of threatened wrongful dispossession	23	Power to transfer proceedings
6	Right of mundkar to enjoy supply of power or water or any customary easement, etc.	24	Appeal
7	Mundkar to have right to repair, maintain and improve his dwelling house	25	Revision
7A	Mundkar to have right to reconstruct, rebuild his dwelling house	26	Extent of powers in appeal or revision
8	Mundkar to have right to use the dwelling house for business, etc.	27	Powers of Civil Courts to be exercised in conduct of inquiries and proceedings under this Act
8A	Declaration of right	28	Limitation and court fees
9	Transfer of property by bhatkar	29	Register of mundkars
10	Lease holder of a mundkar how to be dealt	30	Presumptive value of the record
11	Free services by mundkars to be abolished	31	Protection of action taken under the Act and bar of jurisdiction of Courts
12	Grounds on which a mundkar can be evicted from his dwelling house	32	Suits involving issues required to be decided under this Act
13	Transfer of pending suit or other proceedings for eviction	33	Bar on appearance by pleaders
14	Surrender by mundkar	34	Penalty
15	Right of mundkar to purchase the dwelling house	35	Offences by companies
16	Procedure for purchase under section 15	36	Power to give directions
17	Mundkar's right to alienate	37	Delegation of powers
18	Grant of loan by Government to a mundkar regarding his dwelling house	38	Act to over-ride other laws, etc.
		39	Exemptions
		40	Power to make rules
		41	Repeal and saving

Law and Judiciary Department

Notification

LD/Bill/10/75-76

The following Bill passed by the Legislative Assembly of Goa, Daman and Diu and assented to by the President of India on 10-2-76 is hereby published for general information.

M. S. Borkar, Under Secretary (Law).

Panaji, 17th February, 1976.

**The Goa, Daman and Diu Mundkars (Protection
from Eviction) Act, 1975**

(Act No. 1 of 1976)

AN

ACT

to provide for better protection to mundkars against eviction from their dwelling houses and for granting them the right to purchase the same and to make certain other provisions connected therewith —

Whereas it is expedient to give better protection to the mundkars against eviction from their dwelling houses and to grant them the right to purchase such houses with the sites where such houses have been built at a reasonable price;

Whereas it is expedient to abolish the system of free service rendered by mundkars and turn it into remunerated one;

Be it enacted by the Legislative Assembly of Goa, Daman and Diu in the Twenty-sixth Year of the Republic of India as follows:

CHAPTER I

Preliminary

1. Short title, extent and commencement.— (1) This Act may be called the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975.

(2) It extends to the whole of the district of Goa of the Union territory of Goa, Daman and Diu.

(3) It shall come into force on such date* as the Government may, by notification in the Official Gazette, appoint.

2. Definitions.— In this Act, unless the context otherwise requires—

(a) “Administrative Tribunal” means the Administrative Tribunal constituted under the Goa, Daman and Diu Administrative Tribunal Act, 1965; 6 of 1965.

(b) “agricultural labourer” means a person whose principal means of livelihood is the income he gets as wages either in cash or in kind in connection with the agricultural operations he performs;

(c) “agriculture” with its grammatical variations and cognate expressions, includes horticulture, the raising of crops of coconut, arecanut, cashew or mango gardens and dairy farming;

* It came into force in the District of Goa w.e.f. 12-3-1976 by Notification No. RD/MND/ACT/241/66-76 dated 10-3-1973. See Notification, at page 62.

(d) “agricultural land” means the land used either for the purpose of agriculture or for purposes ancillary thereto;

(e) “appointed date” means the date on which this Act comes into force;

(f) “bhatkar” means a person who owns the land on which the mundkar has a dwelling house;

(g) “Chief Town Planner” means an officer appointed by the Government to enforce Town Planning Regulations in the Union territory of Goa, Daman and Diu;

(h) “Collector” means the Collector of the district and includes any other officer appointed by the Government to exercise and perform the powers and functions of a Collector under this Act;

(i) “dwelling house” means the house in which mundkar resides with a fixed habitation ¹[] and includes—

(i) (a) the land on which the dwelling house is standing and the land around and appurtenant to such dwelling house, subject to a maximum limit of five meters, if the land is ²[on the appointed date] within the jurisdiction of a village panchayat, and two metres, if it is not within such jurisdiction, from the outer walls of the dwelling house:

Provided that, where the distance between the outer walls of the dwelling house of the mundkar and of the house of the bhatkar, or between the outer walls of the dwelling house of a mundkar and of the dwelling house or houses of one or more mundkars, is less than double the aforesaid limit the land appurtenant to such dwelling house shall be half of the land lying between the outer walls of the dwelling house of such mundkar and the bhatkar or between the outer walls of the dwelling house of such mundkar and the outer walls of the dwelling house or houses of such other mundkar or mundkars, as the case may be; or

(b) three hundred square metres of land including the land on which the dwelling house is standing:

Provided that where ³[on the appointed date] the dwelling house is within the jurisdiction of a municipal council, the dwelling house shall include two hundred square metres of land including the land on which the dwelling house is standing:

Provided further that where there is on the appointed date in the property of the bhatkar, the house of the bhatkar or a dwelling house of one or more than one

¹ The words “whether such house was constructed by the mundkar at his own expense or at the bhatkar’s expense or with financial assistance from the bhatkar” omitted by the Amendment Act 10 of 1985.

² Inserted by the Amendment Act 2 of 1996. However Hon’ble High Court of Bombay at Goa in the Writ Petition No. 86 of 1997 by the Judgement dated 16th December, 2003 hold that the Act are ultravires Article 14 read with Article 13 (2) of the Constitution of India. Thereafter same provisions were made by the Amendment Act 11 of 2005 and come into force on the day from which earlier amendment was made in to force.

³ Inserted by the Amendment Act 2 of 1996. However Hon’ble High Court of Bombay at Goa in the Writ Petition No. 86 of 1997 by the Judgement dated 16th December, 2003 hold that the Act are ultravires Article 14 read with Article 13 (2) of the Constitution of India. Thereafter same provisions were made by the Amendment Act 11 of 2005 and come into force on the day from which earlier Amendment was made in to force.

mundkar, and the total extent of the land is inadequate to provide each of them the extent indicated in this clause, the dwelling house shall include, in the absence of any agreement, the land apportioned in equal shares, as far as practicable, by the Mamlatdar.

Explanation I.— The option contemplated under this clause shall be exercised by the Mundkar in the manner prescribed.

Explanation II.— For the purpose of this clause “house” means an entity in itself and shall not include a Dharmashala or such other building belonging to or in possession of a religious or charitable institution and is used for temporary accommodation and such other building as may be meant for letting out on hire and a portion of which has been let out.

(ii) the cattle shed, stable, pig-sty, workshop or such other structure connected with the business or profession of the mundkar; and

(iii) the customary easement, if any, which the residents of the dwelling house have been enjoying for access to a public road or a well or any other place;

(j) “factory” has the meaning assigned to it in clause (m) of section 2 of the Factories Act, 1948; Central Act
63 of 1948.

(k) “Government” means the Administrator of the Union territory of Goa, Daman and Diu appointed by the President under article 239 of the Constitution;

(l) “local authority” means a municipal council established under the Goa, Daman and Diu Municipalities Act, 1969 or a village panchayat established under the Goa, Daman and Diu Village Panchayats Regulation, 1962; 7 of 1969.
9 of 1962.

(m) “Mamlatdar” has the meaning assigned to it in clause (c) of section 2 of the Goa, Daman and Diu Mamlatdar’s Court Act, 1966; 9 of 1966.

(n) “member of the family” means—

(i) in relation to a mundkar who is an individual, his spouse, son, unmarried daughter and includes father, mother, grandson, widowed daughter, widowed grand-daughter solely dependent on the mundkar for maintenance;

(ii) in relation to a mundkar who is a joint Hindu family, the members of such a family;

(iii) in relation to joint owners other than a joint Hindu family, the members of the family as indicated in sub-clause (i) in relation to each of such joint owners;

(o) “mine” has the meaning assigned to it in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952; Central Act
35 of 1952.

(p) “mundkar” means a person who, with the consent of the bhatkar or the person acting or purporting to act on behalf of the bhatkar lawfully resides with a fixed habitation in a dwelling house with or without obligation to render any services to the bhatkar and includes a member of his family but does not include—

- (i) a person paying rent to the bhatkar for the occupation of the house;
- (ii) a domestic servant or a chowkidar who is paid wages and who resides in an out-house, house-compound or other portion of his employer's residence;
- (iii) a person employed in a mill, factory, mine, workshop or a commercial establishment and is residing in the premises belonging to the owner or person in charge of such mill, factory, mine, workshop or commercial establishment, in connection with his employment in such mill, factory, mine workshop or commercial establishment; and
- (iv) a person residing in the whole or part of a house belonging to another person or in an out-house existing in the compound of the house, as a care-taker of the said house or for purposes of maintaining it in habitable condition.

Explanation.— A person shall be deemed to be lawfully residing with the consent of the bhatkar in a dwelling house if such person resides in it for a period exceeding one year prior to the appointed date and the bhatkar has not initiated any proceedings, during the said period of one year, to evict such person from the dwelling house, through a competent court of law, on the ground that such person was a trespasser or, having so initiated such proceedings, does not succeed in obtaining a decree for the eviction of such person.

- (q) "person" includes a joint Hindu Family;
- (r) "prescribed" means prescribed by rules made under this Act;
- (s) "Provedoria de Assistencia Publica" means the Institute of Public Assistance established under the enactment Legislative Diploma No. 1984 dated 14th April, 1960;
- (t) "village artisan" means a person whose principal means of livelihood is the income he derives from working as an artisan in a village.

CHAPTER II

Rights and Liabilities

3. Rights of a mundkar to be heritable.— The rights of a mundkar in his dwelling house shall be heritable and shall not be transferable.

4. Bar to eviction from a dwelling house and restoration of possession.— (1) Notwithstanding anything to the contrary provided in any custom, usage, contract, decree or order of any court or tribunal or any law, no mundkar shall be evicted from his dwelling house except in accordance with the provisions of this Act.

(2) Any mundkar, who was in occupation of a dwelling house on the 4th February, 1971 and was evicted from such dwelling house thereafter but before the appointed date, shall be entitled to the restoration of such dwelling house, if—

- (i) he makes an application to the Mamlatdar, in the prescribed form, within one year from the appointed date, for the restoration of such dwelling house; and
- (ii) the bhatkar is not able to prove that—
 - (a) the mundkar was evicted from the dwelling house in execution of an order of the Mamlatdar or the Administrative Tribunal or a Civil Court; or

(b) the mundkar was paid by the bhatkar any consideration in cash or kind or given an alternative site for the construction of a dwelling house or an alternative dwelling house; or

(c) the dwelling house has been destroyed, dismantled or removed.

Explanation.— For the purposes of sub-clause (c) if it is proved to the satisfaction of the Mamlatdar that the dwelling house was destroyed, dismantled or removed in order to defeat the purposes of this Act, the bhatkar shall be liable to provide a similar dwelling house at his own cost in the same property and if not possible in his own nearest property.

⁴[]

(3) Any mundkar, who is in possession of a dwelling house on the appointed date but is evicted thereafter in contravention of the provisions of this Act, may, within one year from the date of his eviction, apply to the Mamlatdar in the prescribed form, for the restoration of his dwelling house.

(4) On receipt of an application under sub-section (2) or sub-section (3), the Mamlatdar shall, after holding such inquiry as may be prescribed, decide whether the applicant is entitled to the restoration of the dwelling house and may pass such order thereon as he deems fit. The Mamlatdar may also order that the bhatkar, who unlawfully evicted the mundkar, shall pay such compensation to the mundkar as is payable by the bhatkar to him under sub-section (7).

(5) No order under sub-section (4) shall be passed by the Mamlatdar, unless the person against whom the order is proposed to be passed has been given a reasonable opportunity of being heard in the matter.

(6) Notwithstanding anything contained in the foregoing provisions, where the Collector is satisfied that a mundkar has, for reasons beyond his control, omitted to take steps for restoration of possession within the time limit specified in sub-section (2) or sub-section (3), as the case may be, he may, on his own motion or on the application made by the mundkar, within one month from the date the omission is known to him, condone the delay and direct the Mamlatdar to pursue the matter for the restoration of the dwelling house and he may after holding such inquiry as may be prescribed, pass such order thereon as he deems fit:

Provided that, no action shall be taken by the Collector under this sub-section, after a period of one year from the time limit specified in sub-section (2) or sub-section (3), as the case may be.

(7) Any person, who evicts or causes the eviction of a mundkar, in contravention of sub-section (1), or, in any manner, disturbs or interferes with the customary easement or other right which a mundkar is entitled to enjoy under section 6, shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees or with both and shall be liable also to pay compensation to the mundkar for the damages caused to him by his eviction, or the disturbance or interference with the customary easement or other rights which he is entitled to enjoy.

⁴ The expression "If the bhatkar does not possess such land the Mamlatdar may provide for the same following the provisions under section 16." Omitted by the Amendment Act 1 of 1977.

(8) Any person, who attempts to contravene or abets the contravention of the provisions of sub-section (1), of section 6, shall be deemed to have contravened the said provisions.

(9) Any person who does not restore the possession to the mundkar in pursuance of an order made under sub-section (4) or sub-section (6), shall, in addition to any other penalty to which he may be liable, be summarily removed by the Mamlatdar, who thereupon, shall restore the possession to the mundkar.

5. Relief in certain cases of threatened wrongful dispossession.— (1) Any mundkar in possession of his dwelling house, who apprehends that he may be dispossessed of the dwelling house by or on behalf of the bhatkar contrary to the provisions of this Act, may, in the prescribed manner, apply to the Mamlatdar for an order safeguarding his right to possession.

(2) On receipt of such application, if the Mamlatdar after holding such inquiry as may be prescribed, is satisfied that the applicant is entitled to continue in possession, he may, by order, direct the bhatkar or the person acting or purporting to act on behalf of the bhatkar to refrain from disturbing the possession of the mundkar otherwise than in accordance with the law.

(3) In any proceeding under this section, if it is proved to the satisfaction of the Mamlatdar, by affidavit or otherwise, that the bhatkar or the person acting or purporting to act on behalf of the bhatkar is threatening the mundkar with the aim of evicting him from his dwelling house, the Mamlatdar may, by order, grant a temporary injunction restraining the bhatkar or such person from evicting mundkar or threatening him or otherwise causing him injury, until the final disposal of the pending proceeding or until further orders.

(4) The Mamlatdar shall in all cases, except where it appears that the object of granting injunction would be defeated by the delay, before granting an injunction direct that notice of the application be given to the opposite party.

6. Right of mundkar to enjoy supply of power or water or any customary easement, etc.— (1) (a) Notwithstanding anything contained in any law or in any contract, or in any judgement, decree or order of any court or tribunal, no bhatkar, either by himself or through any person acting or purporting to act on his behalf shall, without just or sufficient cause, cut off, withhold, or interfere with any supply of electricity or water or any customary easement enjoyed by the mundkar, immediately before the appointed date in respect of his dwelling house.

(b) If any such supply or easement is interrupted by any act or omission of the bhatkar, the mundkar, within six months from the date on which the cause of action arose, may make an application to the Mamlatdar for an order directing the restoration of such supply or customary easement and the Mamlatdar may, after holding such inquiry as may be prescribed, pass such order as he considers fit.

(2) When any mundkar apprehends that the bhatkar may act in contravention of the provisions of sub-section (1), he may apply to the Mamlatdar for the grant of an injunction restraining the bhatkar from so acting and, on such application, the Mamlatdar,

if he is satisfied that it is so required in the interests of justice, grant an injunction or pass such order as he deems fit.

(3) If in any proceeding under this section it is proved to the satisfaction of the Mamlatdar by an affidavit or otherwise that an order of temporary injunction is required to be passed to prevent the contravention of the provisions of sub-section (1) the Mamlatdar may pass such order in the interest of justice.

(4) The Mamlatdar shall in all cases, except where it appears that the object of granting an injunction would be defeated by the delay, before granting an injunction direct notice of the application be given to the opposite party.

(5) In the enjoyment of any right of supply or customary easement, the mundkar shall not disturb the bhatkar in the enjoyment of the adjoining portion of his property around the mundkar's dwelling house. If the mundkar so disturbs the bhatkar, he shall be liable to pay to the bhatkar the compensation for the loss caused thereby as may be fixed by the Mamlatdar in the prescribed manner.

⁵[Provided that the Mundkar may, subject to such conditions as may be prescribed, obtain electricity supply or supply of pipe water from any public source or any other facility under any scheme formulated by the Government though providing of such supply or facility involves use of the adjoining portion:

Provided further that for any damage caused to such property by reason of such use, the bhatkar or such other person shall be entitled to such compensation as may be fixed by the Mamlatdar in the prescribed manner.]

7. Mundkar to have right to repair, maintain and improve his dwelling house.— A mundkar shall have a right to maintain, repair, improve or reconstruct his dwelling house without, in any way, increasing the plinth area thereof. He shall have, also, the right to have electricity supply and supply of pipe water, on the same terms and conditions as are applicable to any owner of a house.

⁶[**Explanation:**— The term “improve” shall include construction within the dwelling house like sump tank or overhead tank, water cistern, bathroom, toilet, septic tank, soak pit and the like subject to obtaining necessary permission from the concerned authorities.]

⁷[**7A. Mundkar to have right to reconstruct, rebuild his dwelling house.—** A Mundkar shall have a right to reconstruct, rebuild his dwelling house using the same existing plinth area of his old demolished house, without producing the N.O.C. from the Bhatkar.]

8. Mundkar to have right to use the dwelling house for business, etc.— A mundkar shall use his dwelling house primarily for his residence. However he shall have the right to utilise a portion of his dwelling house without shifting his residence, for any trade or vocation or business as may be permissible under the laws in force from time to time.

⁵ Inserted by the Amendment Act 9 of 1991.

⁶ Inserted by the Amendment Act 9 of 1991.

⁷ Inserted by the Amendment Act 2 of 1993.

⁸**[8A. Declaration of right.**— (1) If any person is entitled to any right under this Act he may move the Mamlatdar by an application for a declaration for such a right.

(2) On receipt of such an application, the Mamlatdar may after holding such enquiry as may be prescribed, pass such order as he considers fit.]

9. Transfer of property by bhatkar.— If the bhatkar sells, exchanges, mortgages, or leases, or in any manner transfers, his property where the dwelling house is situated, the right of the mundkar in the dwelling house shall not, in any way, be affected by such transfer.

10. Lease holder of a mundkar how to be dealt.— Where a person not being a member of the family of a mundkar has been in occupation of a part of the dwelling house on the appointed date, he shall be deemed to be a tenant of the mundkar. In such cases, the provisions of the law governing the relations of landlord and tenant of residential premises, for the time being in force in the area in which the dwelling house is situated, shall apply to such tenant.

11. Free services by mundkars to be abolished.— Notwithstanding anything existing in any custom, usage, contract, decree or order of any court or tribunal or in any law in force, all mundkars shall, as from the appointed date, be free to render or not to render to the bhatkar any service as agricultural labourer, domestic servant, watch and ward or in any other capacity and, for every service so rendered the mundkar shall be entitled to be paid by the bhatkar such remuneration as may be mutually agreed upon by them.

12. Grounds on which a mundkar can be evicted from his dwelling house.— (1) No mundkar shall be liable to be evicted from his dwelling house, except on any one or more of the following grounds namely:—

(a) that he has transferred his interest in the dwelling house after the appointed date;

(b) that neither the mundkar nor any member of his family has been residing in the dwelling house for a continuous period of two years;

(2) A bhatkar who seeks to evict the mundkar on any of the grounds specified in sub-section (1), shall, within six months from the date the cause of action arose, apply in the prescribed form to the Mamlatdar for an order of eviction against the mundkar.

(3) On receipt of an application under sub-section (2), the Mamlatdar shall after issuing a notice to the mundkar and after holding an inquiry, pass such order thereon as he deems fit.

(4) The mundkar evicted from his dwelling house under this section shall be entitled to remove any material belonging to him and used in the dwelling house, unless the bhatkar, at any stage, offers to pay to the mundkar the value of such materials as may be fixed by the Mamlatdar or agreed upon between the bhatkar and the mundkar and pays such value in cash within six months from the date the order of eviction becomes final.

13. Transfer of pending suit or other proceedings for eviction.— (1) All suits, appeals, proceedings in execution of decree or order and other proceedings for the

⁸ Inserted by the Amendment Act 18 of 1978.

eviction of a mundkar or a person who has therein claimed to be a mundkar or for the curtailment or for the non-enjoyment of any right mentioned in sub-section (1) of section 6, pending in any court, on the appointed date, shall be transferred to the Mamlatdar within whose jurisdiction the dwelling house, from which the eviction is sought, is situated.

(2) The Mamlatdar, to whom a suit, appeal, proceeding in execution or other proceeding is so transferred under sub-section (1), shall inquire into and first decide the question whether the person to be evicted is a mundkar or not and if his decision is that such person is not a mundkar, the suit, appeal, proceeding in execution or other proceeding shall be re-transferred to the court from which it was transferred to the Mamlatdar.

(3) If the Mamlatdar decides that the person to be evicted is a mundkar, he shall declare the suit to abate and direct the bhatkar to make a fresh application under this Act, if the bhatkar so desires.

14. Surrender by mundkar.— (1) Any mundkar may surrender his right over the dwelling house if the following conditions are satisfied:—

- (i) it is made by the mundkar in writing and is admitted by him before the Mamlatdar;
- (ii) it is made voluntarily and in good faith to the satisfaction of the Mamlatdar;
- (iii) it is approved by the Mamlatdar.

(2) Where the Mamlatdar is of the opinion that the conditions mentioned in sub-section (1) are not satisfied, he may, after giving a reasonable opportunity to the bhatkar to show cause against taking action under this sub-section, and after holding such inquiry as he may deem fit, by order, refuse to approve the surrender.

15. Right of mundkar to purchase the dwelling house.— (1) Notwithstanding anything to the contrary contained in any law for the time being in force, a mundkar shall, subject to the provisions of this Act have the right to purchase the dwelling house occupied by him.

(2) The maximum extent of land around or appurtenant to the dwelling house which a mundkar is entitled to purchase under this section shall be as indicated under sub-clause (i) of clause (i) of section 2.

(3) The purchase price payable by the mundkar for his dwelling house shall be the market value of the dwelling house purchased ⁹[as prevailing on the appointed date] and the improvement thereon, other than the improvement, if any, belonging to the mundkar:

Provided that, when the house, hut or any structure with its materials belong, wholly or partly, to the mundkar, the corresponding value shall be deducted from the market value

⁹ Inserted by the Amendment Act 6 of 1995. However Hon'ble High Court of Bombay at Goa in the Writ Petition No. 86 of 1997 by the Judgement dated 16th December, 2003 hold that the Act are ultravires Article 14 read with Article 13 (2) of the Constitution of India. Thereafter same provisions were made by the Amendment Act 11 of 2005 and came into force on the day from which earlier amendment was made in to force.

and, in such case, the purchase price shall be the balance left after deducting the corresponding value from the market value:

¹⁰[Provided further that—

(a) when a mundkar has been permitted to occupy the dwelling house by the bhatkar for the purpose of cultivation of, or for the purpose of watching and protecting, an agricultural land of the bhatkar and is actually rendering such service and continues to render such service with or without remuneration; or

(b) where a mundkar is an agricultural labourer or a village artisan; or

(c) where the annual income of a mundkar, being a person belonging to Scheduled Castes or the Scheduled Tribes and not falling under clause (a) or clause (b), from all sources does not exceed rupees three thousand and six hundred;

then, the purchase price payable by such mundkar and a member of his family shall be twenty percent of the market value payable.

Explanation.— For the purposes of this sub-section—

(a) “Scheduled Castes” means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 of the Constitution to be Scheduled Castes in relation to the Union territory of Goa, Daman and Diu;

(b) “Scheduled Tribes” means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 342 of the Constitution to be Scheduled Tribes in relation to the Union territory of Goa, Daman and Diu.]

(4) The purchase price payable under sub-section (3) in respect of the dwelling house shall be paid in not more than ten equal annual instalments:

Provided that, it shall be open to the mundkar to pay the entire purchase price in lumpsum, in which case, the amount payable shall be only ninety per cent of the purchase price.

(5) The market value of the dwelling house, shall be decided by the Mamlatdar, after making such inquiry as he deems necessary and in the prescribed manner.

16. Procedure for purchase under section 15.— (1) A mundkar willing to purchase the dwelling house occupied by him shall apply to the Mamlatdar within whose jurisdiction the dwelling house is situated.

(2) An application under sub-section (1) shall be in such form and shall contain such particulars as may be prescribed.

(3) The Mamlatdar shall, after giving notice to the bhatkar of the land in which the dwelling house is situated and any other person interested in the land and after such inquiry as may be prescribed, pass such orders on the application as he deems fit.

¹⁰ Substituted by the Amendment Act 8 of 1979.

(4) An order under sub-section (3), allowing an application shall specify—

- (i) the extent and measurement of land corresponding to the dwelling house which the mundkar is entitled to purchase;
- (ii) the purchase price payable by the mundkar and the mode of payment;
- (iii) the amount due to the bhatkar or other persons interested in the land;
- (iv) the value of encumbrances subsisting or claims for maintenance or alimony charged on the land allowed to be purchased by the mundkar;
- (v) the amount payable to the holder of the encumbrance or the person entitled to the maintenance or alimony and the order of priority in which amount is payable;
- (vi) such other particulars as may be prescribed.

(5) Where the right, title and interest of the person in possession of the land in which the dwelling house is situated or any other person interested in the land form part of the security for any encumbrance or charge for maintenance or alimony the Mamlatdar shall, for the purpose of determining the value of the encumbrance or charge for the maintenance or alimony relating to the portion in respect of which purchase is allowed, apportion the entire encumbrance or charge for the maintenance or alimony between the land in which the dwelling house is situated and the portion allowed to be purchased, in proportion to the value of the two portions.

(6) The purchase price payable by the mundkar shall be distributed according to the following provisions:—

(a) Where the right, title and interest of the bhatkar is subject to any encumbrance or charge for maintenance or alimony, the purchase price shall be first paid to such person interested in such encumbrance or charge for maintenance or alimony, in the order of priority fixed under clause (v) of sub-section (4) and the balance of the amount, if any, shall be paid to the bhatkar.

(b) If the total amount of such encumbrance, maintenance or alimony is more than the compensation payable to the bhatkar, the whole amount shall be reserved for payment to the holder of the encumbrance or the person entitled to the maintenance or alimony and no amount shall be paid to the bhatkar. After this is done, the dwelling house of the mundkar shall be declared free from any encumbrance or charge for maintenance or alimony.

(c) Where a person entitled to the purchase price or the value of the encumbrance, maintenance or alimony dies before it is paid to him it shall be paid to his legal representatives.

(d) Where the person entitled to receive the purchase price or the value of the encumbrance is a private trust or endowment or a minor or a person suffering from legal disability or a limited owner, the purchase price or the value of the encumbrance may, notwithstanding anything contained in any law for the time being in force, but subject to any general directions that the Government may give, be deposited for and on behalf of such person with such authority or bank as may be prescribed.

(e) Where before any court or other authority any suit or other legal proceeding is pending which directly or indirectly affects or is likely to affect the right of any person to receive the whole or part of the purchase price or the amount of encumbrance or maintenance or alimony payable under this section, the court or other authority may require the Mamlatdar to place at its disposal the amount so payable and thereupon the same shall be disposed of in accordance with the orders of such court or other authority.

(7) When an application under sub-section (1) has been allowed and the purchase price is determined by an order of the Mamlatdar under sub-section (3), the mundkar shall deposit with the Mamlatdar,

(i) where the purchase price is proposed to be paid in a lumpsum the entire amount due, within one year; or

(ii) where the purchase price is proposed to be paid in instalments, the first instalment thereof, within six months from the date on which the order of the Mamlatdar under sub-section (3) has become final. The second and subsequent instalment shall be deposited with the Mamlatdar with intervals of one year and in the manner prescribed:

Provided that the Mamlatdar may, on application by the mundkar before the expiry of one year or six months, as the case may be, extend the period for making such deposit:

Provided further that the Mamlatdar may, on application by the mundkar, before the expiry of one year or six months, as the case may be extend the period for making such deposit, so however that the period so extended shall not exceed three months.

(8) After the order of the Mamlatdar under sub-section (3) has become final and on the deposit of the last instalment of the purchase price or on the deposit of the purchase price in a lumpsum, the Collector shall issue a certificate of purchase in such form and containing such particulars as may be prescribed, and thereupon the right, title and interest of the bhatkar shall, in respect of the dwelling house allowed to be purchased, vest in the mundkar free from all encumbrances or charges.

¹¹[(9)Where a mundkar fails to deposit the first instalment or the subsequent instalments or the lumpsum, as the case may be, on or before the due date, the amount due shall bear an interest of six percent per annum.]

¹²[...]

17. Mundkar's right to alienate.— (1) A mundkar shall not be entitled to alienate, by sale the dwelling house purchased by him, in pursuance of the provisions of this Act, within a period of three years from the date of issue of certificate of purchase and any transaction made in contravention thereto shall be null and void.

¹¹ Substituted in place of "Where a mundkar fails to deposit the first instalment or the lumpsum, as the case may be, on or before the due date, the amount due shall bear an interest of six percent per annum" by the Amendment Act 1 of 1977.

¹² Sub-section 10 omitted.

(2) When mundkar intends to sell the dwelling house purchased by him after the expiry of the period mentioned in sub-section (1) he shall give notice of his intention to the bhatkar in the prescribed manner and shall specify the price at which the sale is to take place and call upon him to state within ninety days of the receipt of the notice whether he is willing to buy the dwelling house at the price specified.

(3) The bhatkar may within ninety days of the receipt of the notice signify in the prescribed manner his readiness to purchase the land at the price specified in the notice and thereupon a contract to purchase the land at the said price shall be deemed to have been concluded between the bhatkar and the mundkar.

(4) If the bhatkar fails within the period specified in sub-section (2) to signify his acceptance as provided in sub-section (3), the mundkar shall be free to sell the dwelling house to any person at a price not lower than that set out in the notice.

(5) Any sale by a mundkar to a person other than the bhatkar without giving the notice required by sub-section (2), or before the expiry of the period of the said notice or at a price lower than that set out in the notice as the case may be shall be void.

18. Grant of loan by Government to a mundkar regarding his dwelling house.—

(1) The Government may, subject to due appropriation being made in this behalf, grant, on such terms and conditions as may be prescribed, a loan to a mundkar for the purchase of his dwelling house under section 15.

(2) The Government may, when it considers necessary so to do, also arrange the required loan assistance to a mundkar from the Life Insurance Corporation or other institution advancing loans for housing purposes.

19. Bar to attachment, seizure or sale by process of court.— The interest of mundkar in his dwelling house shall not be liable to be attached, seized, or sold in execution of a decree or order of a Civil Court.

CHAPTER III

Power, functions, appeals, etc. and maintenance of registers

20. Commencement of proceedings.— Save as otherwise expressly provided by or under this Act, all inquiries and original proceedings before the Mamlatdar shall be commenced by an application which shall contain the following particulars:—

(a) the name, age, profession and place of residence of the applicant and the opposite parties;

(b) a short description and situation of the dwelling house in respect of which the application is being made;

(c) the circumstances out of which the cause of action arose;

(d) a list of the applicant's documents, if any, and of his witnesses, and whether such witnesses are to be summoned to attend or whether the applicant will produce them on the day of the hearing; and

(e) such other particulars as may be prescribed.

21. Procedure.— (1) Subject to the other provisions of this Act in this behalf, the procedure to be followed by the Mamlatdar, the Collector, the Administrative Tribunal or

the Government in all inquiries, appeals, applications for revision and other proceedings under this Act shall be such as may be prescribed.

(2) Every decision or order passed under this Act shall be recorded in the form of an order which shall state the reasons therefor.

(3) All inquiries and proceedings before the Mamlatdar, the Collector, the Administrative Tribunal or the Government shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code.

Central Act
45 of 1860.

22. Execution of order for payment of money or restoring possession.— (1) Any sum, the payment of which has been directed by an order of the Mamlatdar, the Collector, the Administrative Tribunal or the Government, including an order awarding costs, shall be recoverable from the person ordered to pay the same as arrears of land revenue.

(2) An order of the Mamlatdar evicting the mundkar from his dwelling house or restoring to him the possession or use of any land or dwelling house or the enjoyment of the customary easement or supply of electricity or water shall be executed in such manner as may be prescribed and by using such force as may be necessary.

(3) An order or decision of the Mamlatdar in execution proceedings shall, subject to appeal or revision, if any, be final.

23. Power to transfer proceedings.— The Collector, may, after due notice to the parties, by order in writing, transfer any proceedings under this Act pending before a Mamlatdar, from such Mamlatdar to any other Mamlatdar and the Mamlatdar to whom the proceedings are so transferred shall thereupon exercise jurisdiction under this Act in such proceedings.

24. Appeal.— From every original order, other than an interim order, passed by the Mamlatdar or the Collector under this Act, an appeal shall lie to the Collector or the Administrative Tribunal respectively and the order of the Collector or the Administrative Tribunal, as the case may be shall be subject to revision if any, under section 25 of this Act, be final.

Explanation.— (1) For the purpose of this section “interim order” shall not include injunction order and such orders shall be subject to appeal and revision.

25. Revision.— (1) From every order, other than an interim order, passed in appeal under section 24 or under sub-section (2), a revision shall lie to the Administrative Tribunal or the Government, respectively and the order of the Administrative Tribunal or the Government, as the case may be, on such revision shall be final.

(2) Save as otherwise expressly provided under this Act, where no appeal lies under this Act, the Collector may, on his own motion or on an application made by an aggrieved person, or on a reference made in this behalf by the Government, at any time, call for the record of any inquiry or proceedings of any Mamlatdar for the purpose of satisfying himself as to the legality or propriety of any order passed by the Mamlatdar and as to the regularity of the proceedings and pass such order thereon as he deems fit:

Provided that no such record shall be called for, after the expiry of six months from the date of such order and no order of such Mamlatdar shall be modified, annulled or reversed unless reasonable opportunity has been given to the interested parties to appear and be heard.

26. Extent of powers in appeal or revision.— (1) The Collector or the Administrative Tribunal or the Government in appeal or in revision, may, confirm, modify or rescind the order in appeal or revision, or may pass such other order as may be legal and just in accordance with the provisions of this Act.

(2) The orders passed in appeal or revision shall be executed in the manner provided for the execution of the orders of the Mamlatdar under this Act.

27. Powers of Civil Courts to be exercised in conduct of inquiries and proceedings under this Act.— The Mamlatdar, the Collector, the Administrative Tribunal or the Government shall exercise in all inquiries, proceedings, appeals or revisions, the powers as are exercised by the concerned trial court, appellate court or a court exercising revisional jurisdiction, under the Code of Civil Procedure, 1908.

Central Act
5 of 1908.

28. Limitation and court fees.— (1) Every appeal or application for revision under this Act shall be fixed within a period of sixty days from the date of the communication of the order of the Mamlatdar, the Collector or the Administrative Tribunal, as the case may be, and the provisions of sections, 4, 5, 12 and 14 of the Limitation Act, 1963, shall apply to the filing of such appeal or application for revision.

Central Act
36 of 1963.

(2) Notwithstanding anything contained in the Court Fees Act, 1870, every application, appeal, or revision made under this Act to the Mamlatdar, the Collector, the Administrative Tribunal or the Government shall bear a court fee stamp of such value as may be prescribed.

Central Act
7 of 1870.

29. Register of mundkars.— (1) In respect of every village, the Government shall cause a register of mundkars to be prepared and maintained in the prescribed manner.

(2) The register shall contain the following particulars, namely:—

- (a) the particulars and description of the dwelling house;
- (b) the location of the dwelling house;
- (c) the name and address of the bhatkar;
- (d) the name and address of the mundkar;
- (e) the nature and extent of service, rendered to the bhatkar or the amount of ground rent if any paid;
- (f) the occupation of the mundkar;
- (g) the rights referred to under section 6; and
- (h) such other particular as may be prescribed.

(3) The register shall be prepared and maintained by the Mamlatdar after such inquiry as may be prescribed.

(4) The Mamlatdar shall, before the preparation of the register, publish a notice, in every revenue village inviting applications from the mundkars for registration and to be presented before such date as may be specified in the notice or such further time as may be allowed by him:

Provided that if, at any time after the publication of the notice, it is found that a mundkar has failed to apply for registering his name the talathi within whose jurisdiction the dwelling house is situated may, after making such inquiry as he considers necessary, propose to the Mamlatdar to enter the name of such mundkar in the concerned register of mundkars and the Mamlatdar shall dispose of the same as provided under sub-section (5).

¹³[**Explanation.**— The expression ‘revenue village’ includes villages in the municipal areas.]

(5) On receipt of the application within the time specified in the notice or within such further time as may be allowed by him, the Mamlatdar shall, give notice to the bhatkar and any other person interested in the land in which the dwelling house situate calling upon them to file objections, if any and requiring them to appear at a time and date specified in the notice for inquiry into the application.

(6) On the dates specified in the notice or any other date to which the enquiry may be adjourned, the Mamlatdar shall hear such of the persons who appear and after such inquiry as may be prescribed, register the mundkar or reject the application.

(7) The order of the Mamlatdar under sub-section (6) shall be served on the interested persons and shall also be published in the notice boards of the village Office of the village in which the dwelling house is situate ¹⁴[].

(8) Any person aggrieved by the registration of a mundkar or by the refusal to register a person claiming to be a mundkar may, within sixty days from the date of registration or refusal, as the case may be, file an appeal to the Collector.

(9) On receipt of an appeal under sub-section (8) the Collector may call for the records of any proceeding under sub-section (6) and may make such inquiry or cause such inquiry to be made and may pass such orders thereon as he deems fit:

Provided that no order prejudicial to any person shall be passed without giving him a reasonable opportunity of being heard.

30. Presumptive value of the record.— An entry made in the register of mundkars prepared in accordance with the provisions of this Act and the rules made thereunder shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted thereafter.

¹³ Inserted by the Amendment Act 4 of 1998.

¹⁴ The words “and also in the local newspapers” omitted by the Amendment Act 12 of 1990.

CHAPTER IV

Miscellaneous**31. Protection of action taken under the Act and bar of jurisdiction of Courts.—**

(1) No suit, prosecution or other legal proceeding shall lie against any officer for anything in good faith, done or intended to be done under this Act.

(2) No Civil Court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined, by the Mamlatdar or the Collector or the Government or the Administrative Tribunal and no order passed by such authority under this Act shall be questioned in any Civil or Criminal Court.

32. Suits involving issues required to be decided under this Act.— (1) If any suit instituted in any Civil Court involves any issues which are required to be settled, decided or dealt with by the Mamlatdar or the Collector under this Act the Civil Court shall stay the suit and refer such issues to the Mamlatdar or the Collector, as the case may be, for determination.

(2) On receipt of such reference from the Civil Court, the Mamlatdar or the Collector shall deal with and decide such issues in accordance with the provisions of this Act and shall communicate his decisions to the Civil Court and such Court shall thereupon decide the suit in accordance with the procedure applicable thereof.

33. Bar on appearance by pleaders.— Notwithstanding anything contained in this Act or any law for the time being in force, no pleader shall be entitled to appear on behalf of any party in any proceedings under this Act before the Mamlatdar or the Collector:

Provided that the Mamlatdar or the Collector may, in the interest of justice and for reasons to be recorded in writing, allow the parties to be represented at their own cost by a pleader:

Provided further that the fees for the pleader shall not be allowed as part of the costs in any such proceedings:

Provided also that if any officer of the Government is appointed or declared by a competent court or is authorised under any law for the time being in force as a guardian, administrator or manager of the property of a person who is under a legal disability or is incompetent or unable to manage or to act, such officer shall be entitled to appear through a representative authorised by him in writing in this behalf in any proceedings before the Mamlatdar or the Collector.

Explanation.— For the purpose of this section, the term “pleader” includes an advocate, attorney, Vakil or any legal practitioner.

34. Penalty.— (1) Whoever contravenes any of the provisions of this Act or of any rule made thereunder shall, on conviction by a first class judicial magistrate, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees or with both.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 every offence under this Act shall be cognizable and such offence may, with the permission of the Court be compounded. Central Act
2 of 1974.

35. Offences by companies.— (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section—

(a) “company”, means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm means a partner in the firm.

36. Power to give directions.— (1) The Government shall have power to issue directions or orders to the Mamlatdar or the Collector to give effect to the provisions of this Act and the rules made thereunder.

(2) Any such direction shall be published in the Official Gazette and shall be laid as soon as may be, after it is issued before the Legislative Assembly of Goa, Daman and Diu while it is in session for a period of thirty days.

37. Delegation of powers.— The Government may, by notification in the Official Gazette, delegate all or any of the powers and duties conferred upon itself or upon any officer or authority under this Act, to any other authority, body or persons, subject to such conditions and restrictions, if any, as may be specified in the notification.

38. Act to over-ride other laws, etc.— The provisions of this Act shall have effect notwithstanding anything in any other law or any custom or usage or decree or order of a court, or any agreement or contract, express or implied, inconsistent with the provisions of this Act.

39. Exemptions.— Nothing in this Act shall apply to the land owned or held by Government, Government of any other state in India, Government of India, a local authority or Provedoria da Assistencia Publica.

¹⁵[**Explanation:**— The expression “the land owned or held by the Government” does not include the land vested in the custodian under the Goa, Daman and Diu Administration of Evacuee Property Act, 1964 (Act No. 6 of 1964.)]

40. Power to make rules.— (1) The Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) Every rule made under this Act shall be laid as soon as may be after it is made before the Legislative Assembly of Goa, Daman and Diu while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly agrees in making any modification in the rule or the Legislative Assembly agrees that the rule should not be made and notifies such decision in the Official Gazette, the rule shall, from the date of such notification, have effect only in such modified form or be of no effect as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

41. Repeal and saving.— On and from the appointed date—

(a) “Diploma Legislative No. 1952 of 26th November, 1959” as in force on that date shall stand repealed and any proceedings pending thereunder before the “Mamlatdar” or any other authority shall abate,

(b) section 17 of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 shall stand repealed, 7 of 1964.

(c) the Goa, Daman and Diu (Protection from Eviction of Mundkars, Agricultural Labourers and Village Artisans) Act, 1971 shall stand repealed and the provisions of sections 6 and 24 of the General Clauses Act, 1897; as applied to the Union territory of Goa, Daman and Diu by the Goa, Daman and Diu General Clauses Act, 1965 shall apply to such repeal. 12 of 1971
Central Act
10 of 1897.
7 of 1965.

¹⁵ Inserted by the Amendment Act 41 of 2001.

**The Goa, Daman and Diu Mundkars (Protection
from Eviction) Rules, 1977**

Revenue Department

—

Notification

RD/MND/RLS/363/75

Whereas certain draft rules which the Government intends to frame under the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 were published at page 75 of the Official Gazette No. 10, Series I dated 9-6-1977 under the Notification No. RD/MND/RLS/363/75-77 dated 3-6-1977 of the Revenue Department, Government of Goa, Daman and Diu, inviting objections and suggestions from all persons likely to be affected thereby till 15 days from the date of the publication of the said Notification in the Official Gazette;

And whereas the said Gazette was made available to the public on 9-6-1977;

And whereas objections and suggestions received from the public on the said draft have been considered by the Government;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 40 of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 (Act No. 1 of 1976) and all other powers enabling him in that behalf, the Lieutenant Governor of Goa, Daman and Diu hereby makes the following rules, namely:—

1. Short title and commencement.— (1) These rules may be called the Goa, Daman and Diu Mundkars (Protection from Eviction) Rules, 1977.

(2) They shall come into force at once.

2. Definition.— In these rules, unless the context otherwise requires,—

(a) “Act” means the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 (Act 1 of 1976).

(b) “Form” means a form appended to these rules;

(c) “Section” means a section of the Act;

(d) Words and expressions used, but not defined in these rules shall have the meanings assigned to them in the Act.

3. Right of option by the Mundkar.— A Mundkar desirous of exercising the right conferred on him under section 2 shall do so in writing at the time of applying to the Mamlatdar under sub-section (1) of section 16. The option once exercised shall be final.

4. Form of application for restoration of dwelling house.— Every application under clause (i) of sub-section (2) or sub-section (3) of section 4 for restoration of a dwelling house shall be in Form I.

5. Form of application and mode of enquiry in cases of threatened wrongful dispossession and restoration of supply of power or water or any customary easement.— (1) An application under sub-section (1) of section 5 shall be in Form II.

(2) The Mamlatdar shall, on receipt of an application under sub-rule (1), hold a summary inquiry into the same in the manner prescribed under rule 16 and pass such order as he deems fit.

¹⁵[**5A. Conditions for obtaining supply of electricity or pipe water or other facility through the property adjoining the dwelling house of the Mundkar.**— (1) A Mundkar shall, for the purpose of obtaining supply of electricity or pipe water or any other facility under any scheme formulated by Government to his dwelling house, through the property adjoining his dwelling house, communicate to the owner or owners of such adjoining property and the Mamlatdar by an application about his intention of availing of such supply or facility and shall also explain the extent of the use involved of the adjoining property.

(2) On receipt of an application, the Mamlatdar shall cause an enquiry to be conducted in the matter, inspect the site and pass such order as he deems fit after giving due regard to the technical feasibility of making use of the adjoining property with minimum damage for the purpose of the supply of electricity, pipe water or any other facility formulated under any scheme by the Government.”.]

6. Fixation of compensation for the loss caused to the Bhatkar.— (1) A Bhatkar who is disturbed in the enjoyment of the adjoining property around the mundkar’s dwelling house as a result of enjoyment of any right of supply or customary easement by or on behalf of the mundkar may apply to the Mamlatdar in Form III within six months from the date of such disturbance.

(2) On receipt of such application the Mamlatdar shall hold a formal inquiry into the facts of the case, as far as practicable, in the manner prescribed in rule 14.

(3) If such application is allowed, the compensation payable under sub-section (5) of section 6 shall be fixed by the Mamlatdar having regard to the same factors which are prescribed under these rules to be taken into account for determining the market value under rule 8.

¹⁶[**“6A. Fixation of compensation for the loss caused to the owner or owners of property adjoining the dwelling house of the mundkar.**— The compensation payable by the mundkar to the owner or owners of the property adjoining his dwelling house for the use of such property by the mundkar for obtaining supply of electricity, pipe water or any other facility formulated under any scheme by the Government, shall be fixed by the Mamlatdar having regard to the factors to be taken into account for determining the market value under rule 8”.]

7. Form of application for eviction of the Mundkar.— An application under sub-section (2) of section 12 shall be in Form IV.

¹⁵ Rules 5A inserted by (Amendment) Rules, 1992 (O. G. Series I No. 46 dated 13-2-1992).

¹⁶ Rules 6A inserted by (Amendment) Rules, 1992 (O. G. Series I No. 46 dated 13-2-1992).

8. Determination of market value of the dwelling house.— (1) The Mamlatdar shall have due regard to the following factors while determining the market value of the purchase price payable by the Mundkar for his dwelling house under sub-section (5) of section 15:

(a) the prices of similar lands prevailing in the vicinity of the locality;

(b) the location of the dwelling house as to whether falling or within the jurisdiction of a village Panchayat or within an urban or in a Municipality area as the case may be;

(c) the expenses incurred by the Bhatkar, if any, towards construction of the dwelling house;

(d) the improvements, if any, made by the Bhatkar on the dwelling house or the site where the dwelling house stands; and

(e) any other factors which are generally taken into account in determining the market value of land under the Land Acquisition Act, 1894.

(2) Any agreement fixing the market value of the dwelling house entered into between the Bhatkar and Mundkar shall be ignored by the Mamlatdar while determining the market value under sub-rule (1).

9. Form of application for purchase of dwelling house by the Mundkar.— (1) An application under sub-section (1) of section 16 shall be in Form V shall contain the following particulars:

(a) the name, age, profession and place of residence of the Mundkar and the Bhatkar;

(b) a short description and situation of the dwelling house in respect of which the application is being made;

(c) the nature and value of improvements, if any, made by the Mundkar;

(d) statement whether the house, hut, or any structure with its materials belong, wholly or partly, to the Mundkar or the Bhatkar;

(e) where the applicant Mundkar claims the benefit of the second proviso to sub-section (3) of section 15, a statement to that effect containing facts in support of the claims;

(f) a statement whether the applicant is willing to pay the purchase price in instalments or in lumpsum;

(g) a statement of exercise of option contemplated under clause (i) of section 2; and

(h) a list of the applicant's documents, if any, and of his witnesses and whether such witnesses are to be summoned to attend or whether the applicant will produce them on the day of the hearing.

(2) Every application under sub-rule (1) shall be supported by a certificate of the extract of the register maintained under section 29 showing that the applicant's name is

entered in such register as Mundkar of the dwelling house in respect of which the application is made.

10. Procedure for deposit of instalments with the Mamlatdar.— (1) The Mundkar shall deposit the instalment of purchase price with the Mamlatdar.

(2) The notice of the deposit shall also be given by the Mundkar to the Bhatkar and the amount of the deposit shall be paid to the Bhatkar on his application.

(3) The Mamlatdar shall, as far as practicable, give notice to the Mundkar of the due date for deposit of instalments at least fifteen days prior to such due date. Provided that failure to give such notice shall not exempt the Mundkar from payment of interest prescribed under sub-section (9) of section 16 of the Act.

(4) In case the person entitled to receive the purchase price or the value of the encumbrances is a private trust or endowment or a minor or a person suffering from legal disability or a limited owner, the amount shall be paid to the legal guardian of such a person or the trustees of the private trust or endowment, as the case may be.

11. Certificate of purchase by Mundkar.— The certificate of purchase under sub-section (8) of section 16 shall be in Form VI.

12. Form of intimation under sub-sections (2) and (3) of section 17.— An intimation under sub-section (2) or (3) of section 17 shall be sent by registered post acknowledgement due to the other party and the acknowledgement receipt thereof shall be the conclusive proof of satisfaction of the requirement of such notice. A copy of such intimation shall also be sent to the Mamlatdar.

13. Terms on which a loan may be granted under section 18.— A loan to be granted to a Mundkar under sub-section (1) of section 18, shall be on the following terms and conditions, namely:—

(a) the amount of loan shall not exceed seventy-five percent of the purchase price of the dwelling house and the land on which such dwelling house stands;

(b) the amount sanctioned as loan to the Mundkar shall be paid to the Bhatkar, in adjustment of the purchase price payable by the Mundkar, after obtaining due authorization from the Mundkar;

(c) the Mundkar shall mortgage the dwelling house and the land purchased by him to the President of India till the entire loan amount and the interest payable thereon is fully paid to the Government;

(d) the loan shall bear an interest of six percent per annum and shall be repaid in ten equal or nearby equal annual instalments before such date as may be fixed by the Collector; the first instalment shall be payable on the expiry of one year from the drawal of the loan;

(e) if an instalment of loan amount and the interest due thereon is not paid within the prescribed period, the Mundkar shall be liable to pay an interest of nine per cent per annum at the time of such delayed payment;

(f) the Mundkar shall not be entitled to transfer in any way his interest in the dwelling house till the loan amount and the interest due thereon is fully repaid;

(g) if the Mundkar commits any default in payment of any instalment of the loan amount and the interest due thereon, the balance amount of the loan to be repaid shall become immediately recoverable and Government shall be entitled to sell the dwelling house in any manner deemed suitable by the Collector and the balance amount of the loan and the interest shall be recovered from the sale proceeds and the balance, if any, shall be handed over to the defaulting Mundkar.

14. Manner of conducting enquiries.— Subject to the provisions of the Act, the provisions of this rule shall apply to all the proceedings under the Act except in cases where summary inquiries are prescribed under these rules:—

(1) Any application to be presented to the Mamlatdar shall either be presented to him personally or to any other officer authorised by him in that behalf, in person, during office hours.

(2) Where the application does not contain any of the particulars specified in section 20 or in rule 9, as the case may be, the Mamlatdar shall forthwith examine the applicant on oath and ascertain from him such of the particulars specified in section 20 or rule 9, as the case may be, as are not clearly and correctly stated in the application and shall reduce the examination to writing in the form of an endorsement on an annexure to the application which shall thereupon be deemed to be part of the application. Where the applicant requires time to obtain any of the particulars specified in section 20 or rule 9, as the case may be, the Mamlatdar shall grant him such time as may under the circumstances appear reasonable.

(3) When the application is presented and has, if necessary, been treated in the manner specified in sub-rule (2), the Mamlatdar shall require the applicant to subscribe and verify the application in his presence in the manner following or the like effect —

“I, A.B. the applicant, do hereby declare that what is stated in this application is true to the best of my information, knowledge and belief”.

(4) The Mamlatdar shall endorse the application to the effect that it was duly subscribed and verified. Where the applicant being illiterate cannot write, the verification may be written for him in the presence of the Mamlatdar and the applicant shall affix his mark or thumb impression in token of the authenticity of the verification and the Mamlatdar shall record that the verification was made in his presence at the request of the applicant and that his mark or thumb impression was so affixed.

(5) The Mamlatdar shall reject an application:—

(a) Where the applicant declines to make a statement on oath under sub-rule (2); or

(b) Where the applicant is willing to make or has made a statement on oath under sub-rule (2) but fails to furnish the particulars specified in section 20 or rule 9, as the case may be, within the time fixed under sub-rule (2); or

(c) Where it appears upon face of the application—

(i) that the property or the relief claimed is not one of the kinds specified in the Act; or

(ii) that the application is barred by limitation;

(d) where the applicant declines to subscribe or verify the application as required by sub-rule (3) or (4).

(6) Where it appears to the Mamlatdar that the subject of the application is not within his jurisdiction he shall return the application to the concerned party to be presented before the Competent Authority having jurisdiction.

(7) Where application is admissible, the Mamlatdar shall receive the same. He shall then fix a convenient day and place for trial of the case and shall issue, at the expenses of applicant, notice in the Form VII to the opponent. He shall require the applicant to appear with his documents, if any, and summon witnesses if any, to appear on the day and at the place fixed.

The date to be fixed for the enquiry of the case shall not be earlier than fifteen days nor later than thirty days from the day on which the notice is issued except for sufficient reason to be recorded in writing by the Mamlatdar or in cases of adjournments of the proceedings.

The place to be fixed for the enquiry of the case may be in the Mamlatdar's Office or at or near the scene of dispute or at any other spot that the Mamlatdar considers convenient.

(8) Where either party requires any witness to be summoned to appear on the day and at the place fixed the Mamlatdar shall issue a summons in Form VIII for that purpose.

Such summons shall be issued in duplicate, duly signed and sealed, and shall be served by delivering or tendering the copy to the person therein named or by sending it by registered post A. D. to his address or if such person cannot be found, then by affixing the copy to some conspicuous part of the place where he ordinarily resides or carries on business and on the Notice Board of the Mamlatdar's Office.

The Mamlatdar may issue, after recording his reasons in writing, a warrant in Form IX for the arrest of any such witness, if he fails to appear and the summons is proved to have been duly served in time to admit of his appearance in accordance therewith and no reasonable excuse is offered for such failure.

The payment of the cost incurred in thus procuring the attendance of witnesses shall be regulated in accordance with the rules that may from time to time be in force in regard to the attendance of witnesses in subordinate Civil Courts.

(9) Where the applicant fails to attend or to produce his documents, if any, or to adopt measures to procure the attendance of his witnesses, if any, on the day and at the place fixed, the Mamlatdar shall reject the application whether the opponent appears or not unless the opponent admits the claim.

Where the applicant attends, as required by sub-rule (7); but the opponent fails to attend and the Mamlatdar is satisfied from the evidence before him that the notice has been duly served on the opponent and in sufficient time, to enable the opponent to appear and answer on the day fixed in the notice, he shall proceed to hear and decide the application ex-parte:

Provided that if either party satisfies the Mamlatdar at any time within thirty days from the date of the rejection of an application or of an ex-parte decision that he was prevented by some unavoidable circumstances from attending or from producing his documents or from adopting measures to procure the attendance of his witnesses, as the case may be, the Mamlatdar may issue a notice in Form X, at the expense of the party concerned to the opposite party and if satisfied after hearing the opposite party that the party concerned was prevented as alleged, he may re-hear the case at such time and place, as he may then fix:

Provided further that nothing in the foregoing provisions shall prevent the applicant from withdrawing his application on payment of the opponents costs.

Explanation.— Where there has been an appeal against an order of rejection of an application or an ex-parte decision and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-rule.

(10) Where in the case, mentioned in sub-rule (9) the Mamlatdar is not satisfied from the evidence before him that the notice has been duly served on the opponent and in sufficient time to enable the opponent to appear and answer on the day fixed in the notice, he shall adjourn the trial of the case and issue a fresh notice under sub-rule 7 to the opponent.

Where any witness who has been duly summoned or for whose arrest a warrant has been issued under sub-rule (8) fails to attend on the day and the place fixed, the Mamlatdar may, if he considers there is sufficient reason after taking the evidence of those present, adjourn the hearing of the case, from time to time till the attendance of such witnesses can be enforced.

The Mamlatdar may for any other sufficient reason to be recorded, in writing adjourn the trial of the case for such time, as he thinks fit, but not ordinarily exceeding 10 days.

The provisions of sub-rules (8) and (9) shall apply in respect of any day to which the trial of the case may be adjourned under this sub-rule as if such day were the day originally fixed for the trial.

(11) Subject to the provisions of the Act, a minor may sue or be sued, if he is duly represented by a natural or duly appointed guardian or next friend.

(12) The Mamlatdar may at any stage of the proceedings order that the name of any person to whom possession of the dwelling house or any part thereof may have been transferred or the addition of whom as a party appears necessary in order to enable the court effectually and completely to adjudicate upon the issues be added as an applicant or opponent as the circumstances of the case may require:

Provided that no person shall be added as an applicant without his consent:

Provided further that in respect of any person so added not being a transferee pending the case, the case shall for the purpose of the Act, be deemed to have been instituted on the day, when his name was so added.

(13) In case of death of any party while the case is pending;

(a) if an application is made within one month of such death, the Mamlatdar shall determine summarily who is the legal representative of the deceased party and subject to the provisions of the Act shall enter on record the name of such representative;

(b) if no such application is made, the case shall abate as regards that party.

(14) Where the Mamlatdar orders the name of any person to be added as opponent or enters on the record the name of any person as the legal representative of the deceased party, he shall issue to such person a notice as provided in sub-rule (7) and the trial shall proceed on the date fixed in such notice.

(15) On the date fixed or on any day to which the proceedings may have been adjourned, the Mamlatdar shall, subject to sub-rule (9) proceed to hear all the evidence that is then and there before him and to try the relevant issues.

(16) The Mamlatdar may after due notice to and in the presence of the parties summon and examine, as a witnesses, any person who has not been summoned or produced by any party and may call for and cause to be proved any document which has not been applied for or produced by either of the parties where he considers it expedient in the interest of justice so to do, and may, if he thinks fit, make a personal inspection of the property, in the presence of or after due notice to the parties. He shall without unnecessary delay, record a memorandum after hearing the parties on the spot, if present, of the relevant facts observed at such inspection. The Memorandum shall form a part of the record of the case.

15. Mode of taking evidence under Rule 14.—

(a) In all inquiries under rule 14 the evidence shall be taken down in full, in writing in English in the presence and under the personal superintendence of the Mamlatdar and shall be signed by him. The Mamlatdar shall read out or cause to be read out the evidence so taken to the witness concerned in the language understood by him and obtain his signature thereto in token of its correctness.

(b) In cases in which the evidence is not taken down in full in writing as aforesaid, the Mamlatdar shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes and such memorandum shall be written and signed by the Mamlatdar with his own hand, and shall form a part of the record.

(c) If the Mamlatdar is prevented from making a memorandum as required aforesaid he shall record the reasons of his inability to do so.

Every decision of the Mamlatdar shall be, in writing, signed by him and shall contain a full statement of the grounds on which it is made.

16. Manner of conducting summary inquiries.— (1) In all summary inquiries, the Mamlatdar shall himself, as any such inquiry proceeds, record a minute of the proceedings in his own hand in English including the material averments made by the parties interested, the material parts of the evidence, the decision, and the reasons for the same.

(2) Where the Mamlatdar findings upon the relevant issues is in favour of the applicant, he shall make such order not being in excess of the powers vested in him by or under the Act, as the circumstances of the case appear to him to require and where his findings is in favour of the opponent he shall dismiss the case. In either case, the costs of the application including the costs of executions, shall follow the decision.

17. Procedure for presentation and disposal of appeals and applications for revision.— (1) Every petition for appeal or revision shall be accompanied by a certified copy of the order to which the objection is made unless the production of such copy is dispensed with.

(2) (a) Every appeal or an application for revision made under section 24 or section 25, as the case may be, shall be made in the form of a petition addressed to the appropriate authority and shall be drawn up in concise intelligible language. It shall bear the signature or thumb impression of the applicant or his duly authorised agent and shall bear a Court Fee Stamp of such value as is prescribed thereof in rule 18.

(b) The appeal or application shall contain the following particulars, that is to say—

- (i) the name of the appellant or the applicant, as the case may be;
- (ii) his father's name;
- (iii) his occupation and place of residence and address;
- (iv) the name of the respondent;
- (v) his father's name;
- (vi) his occupation and place of residence and address.

(c) The appeal or application shall also contain a brief statement of facts on which the appellant or applicant relies in support of his appeal or application, and the grounds of his objection to the order or decision against which the appeal or application is made.

(3) (a) Appeals or applications for revision may either be presented to the appropriate authority in person or be forwarded to it by post.

(b) Where an appeal or application is sent by post, the postage on the cover containing it must invariably be fully pre-paid.

(4) Non compliance with the provisions of the preceding sub-rules in any material respect may render an appeal or application liable to be summarily rejected without enquiry into its merits.

18. Court fees to be affixed to every application, appeal or revision made under the Act.— (1) Every application made under the Act to the Mamlatdar shall bear a court fee stamp of Rupee one.

(2) Every Memorandum of appeal or application for revision made under the Act to the Collector, the Administrative Tribunal or the Government, as the case may be, shall bear a court fee stamp of Rupees two:

Provided that when an application or appeal under sub-rule (1) or sub-rule (2) is made by a member of a Scheduled Caste, specified in Part III of the Schedule to the Constitution (Scheduled Castes) Order, 1950 or of a Scheduled Tribe, specified in Part III

of the Schedule to the Constitution (Scheduled Tribes) Order, 1950 living in an area, notified by Government as backward area, the value of the court fee stamp shall be fifty per cent less.

19. Orders.— Every order of the Mamlatdar, whether for rejecting or returning an application or whether for allowing or disallowing a claim, shall be read out by him in open court, either at once or on some future day, of which due notice shall be given to the parties.

20. Mode of execution of the orders of the Mamlatdars.— (1) An order of the Mamlatdar evicting the Mundkar from his dwelling house or restoring to him the possession or use of any land or dwelling house shall be executed in the following manner:

(a) by serving a notice on the person or persons in possession requiring them (with such time as may appear reasonable after receipt of the said order) to vacate the land or the dwelling house, and

(b) if such notice is not obeyed, by removing, or deputing a subordinate to remove, any person who may refuse to vacate the same, and

(c) if the officer removing any such person is resisted or obstructed by any person, the Mamlatdar may use such force as may be necessary, with the assistance of the police.

(2) An order of the Mamlatdar restoring to the Mundkar the enjoyment of the customary easement or supply of electricity or water shall be executed in the following manner:

(a) by serving a notice on the Bhatkar or any person acting or purporting to act on his behalf requiring him to restore to the Mundkar the enjoyment of the customary easement or supply of electricity or water (within such time as may appear reasonable after receipt of the said notice); and

(b) if the Bhatkar or person acting or purporting to act on his behalf has had the opportunity of obeying the notice and has wilfully failed to obey it, by the attachment of his property;

(c) where any attachment under sub-rule (b) has remained in force for six months, if the Bhatkar or the person acting or purporting to act on his behalf has not obeyed the order and the Mundkar applies to have the attached property sold, such property may be sold by public auction and out of the proceeds, the Mamlatdar may award to the Mundkar such compensation as he thinks fit, and shall pay the balance (if any), to the Bhatkar or the person acting or purporting to act on his behalf on his application;

(d) where the Bhatkar or the person acting or purporting to act on his behalf has obeyed the order, and paid all costs which he is bound to pay, or where at the end of six months from the date of the attachment, no application, to have the property sold has been made, or if made, has been refused, attachment shall cease;

(e) where such order has not been obeyed the Mamlatdar may in lieu of or in addition to all or any of the processes aforesaid direct that the act required to be done

may be done, so far as practicable, by the Mundkar or some other person appointed by the Court, at the cost of the Bhatkar or person acting or purporting to act on his behalf and upon the act being done, the expenses incurred may be ascertained in such manner as the Mamlatdar may direct and may be recovered as arrears of land revenue.

21. Procedure for preparation and maintenance of register of Mundkar under Section 29.— (1) The Mamlatdar shall be responsible for the preparation and maintenance of the register in all villages within his jurisdiction.

(2) The Register shall be prepared and maintained in Form XI.

(3) After the order of the Mamlatdar, under sub-section (6) of section 20, for registering the Mundkar has become final or his order rejecting the application has been reversed in appeal or revision and directions are given to register the applicant as Mundkar, the name of such person shall be entered in the register of Mundkars maintained under sub-rule (2).

(4) The provisions of sections 96 and 97 of the Goa, Daman and Diu Land Revenue Code, 1968, and rules 9 to 14 of the Goa, Daman and Diu Land Revenue (Record of Rights and Register of Cultivators) Rules, 1969 regarding reporting of Acquisition of rights and register of mutations dealt with in those sections and rules, shall, as far as may be, apply to the mutations of entries in the Register maintained under the Act.

FORM I

(See Rule 4)

Form of application for restoration of possession under clause (i) of sub-section (2) or sub-section (3) of section 4 of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975.

To

The Mamlatdar of ...

Name of applicant ...

Age ... Profession ... Place of residence ...

Name of opponent ...

Age ... Profession ... Place of residence ...

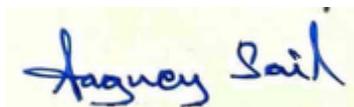
Sir,

I do hereby state that I have been evicted from the dwelling house on ... in contravention of the provisions of the Act. I am entitled to the restoration of possession of the dwelling house described below in the following circumstances.

Description of the dwelling house:

(Here state the circumstances in full including grounds in support of claim for protection as Mundkar).

The dwelling house is at present in the possession of the opponent. I apply that the possession of the said dwelling house be restored to me and/or any other appropriate relief as provided in the Act be afforded to me.



-- TRUE COPY --

ANNEXURE - R2/4

GOA COASTAL ZONE MANAGEMENT AUTHORITY

1st Floor, Pandit Deendayal Updhyay Bhavan,
Near Pundalik Devasthan,
Pundalik Nagar, Porvorim Goa 403521
www.czma.goa.gov.in

Ref.No.GCZMA/GCZMA/N/08-09/ 74 / 1174

Date 5/6/2018

MOST URGENT

NGT

DIRECTIONAL MATTER

NOTICE FOR PERSONAL HEARING

Sub: Personal hearing before the Authority.

- Ref: (1) Complaint letter dated 12/01/2015 from Mr. Rajan Ghate.
(2) Letter dated 06/02/2015 bearing no. GCZMA/N/ 08-09/74/1928 issued by GCZMA.
(3) Reply filed on 19/10/2015 by Mr.Jaiprakash Sirsaikar and Mr.Sagardeep Sirsaikar.
(4) Complaint dated 07/03/2016 from Mr.Jose Lopes.
(5) Complaint dated 21/03/2016 from Mr.Kashinath Shetye and others.
(6) Original Application bearing no.60/ 2017 (WZ) filed by Mr.Kashinath Shetye & anr & v/s Chief Secretary, State of Goa.
(7) Order dated 10/11/2017 passed by Hon'ble NGT, Pune in Original Application bearing no.60/ 2017 (WZ).
(8) Minutes of 163rd GCZMA meeting held on 14/11/2017.
(9) Minutes of 164th meeting held on 29/11/2017.
(11) Demolition order bearing no. GCZMA/ N/ ILLE-COMPL/15-16/ 99/1945 dated 28/03/2018 issued by GCZMA.
(12) A writ petition bearing no.476/2018 filed before Hon'ble High court of Bombay at Goa.
(13) Appeals bearing no.61/2018 and Appeal no.62/2018 filed the Hon'ble National Green Tribunal, New Delhi
(14) Order dated 10/08/2018 passed by the Hon'ble National Green Tribunal, New Delhi.
(15) Minutes of 183rd GCZMA meeting held on 31/08/2018.
(16) Order dated 20/09/2018 issued by GCZMA.
(17) Appeal bearing no. 195/2018 filed before Hon'ble NGT New Delhi.
(18) 01/10/2018 passed in appeal bearing no.231/2018 by Hon'ble NGT New Delhi.

WHEREAS, the Office of the Goa Coastal Zone Management Authority (hereinafter referred to as 'the GCZMA' in short) pursuant to complaint referred to above at serial no.1, 4, 5 and order dated 10/11/2017 passed by Hon'ble NGT, Pune in Original Application bearing no.60/2017 had passed a order of demolition bearing no. GCZMA/ N/8-09/74/1946 dated 28/03/2018 against Mr.Sagardeep Sirsaikar, Mr.Jaiprakash Sirsaikar, Mr.Audumber Sirsaikar for illegal construction of structure in survey no. 25/6 of Assagao, Badem, Bardez-Goa.

AND WHEREAS, the said order was challenged before the Hon'ble High court of Bombay at Goa in a Writ petition bearing no.476/2018 which was withdrawn with a leave to approach Hon'ble National Green Tribunal in an appeal.

AND WHEREAS, Appeals bearing No.61/2018 and No.62/2018 were filed before the Hon'ble National Green Tribunal, New Delhi. The matters were heard via video conferencing on 10/08/2018. The Hon'ble NGT, New Delhi vide order dated 10/08/2018 interalia observed as follows :-

3. The matter was disposed of on 18.11.2015, giving liberty to the complainant move the Goa Coastal Zone Management Authority.

4. The said authority thereafter passed the impugned order. It has been observed in the order that the appellants failed to remain present to justify that the construction was valid.

5. The case of the appellants is that they never received notice to appear and they could not present their view points. This is a matter which can be verified by the authority itself. The appellants can appear before the authority and present their view point.

6. If the authority is satisfied that the appellant did not receive any notice, the said authority may give an opportunity to the appellants to present their view point and pass appropriate orders in accordance with law.

7. To enable the appellants to approach the concerned authority, we direct that status quo be maintained for a period of four weeks from today."

AND WHEREAS, the appellants vide letter dated 16/08/2018 inwards the copy of the abovementioned order to GCZMA and other documents interalia requesting the authority to hear them and further act interms of the same.

AND WHEREAS, the matter was placed in the 183rd GCZMA meeting held on 31/08/2018 for discussion and deliberation upon order dated 10/08/2018 passed by the Hon'ble National Green Tribunal, New Delhi in Appeals bearing No.61/2018 and No.62/2018 and subsequent representation made by appellants. In the said meeting the authority decided as follows: *"The authority observed that as per order dated 10/11/2017 passed by Hon'ble NGT in Original Application no.60/2017 (WZ) and Original Application no.61/2017 the service of show cause notice was waived and parties were directed to appear before GCZMA on 14/11/2017 and place on record all such relevant material in support of their respective cases. The authority was only conferred the duty to conduct inquiry in the matter in accordance with law. Accordingly GCZMA had convened 163rd meeting on 14/11/2017 to grant personal hearing as per order dated 10/11/2017 passed by Hon'ble NGT wherein respondents remained absent while complainant were present. Thereafter, the GCZMA convened the 164th meeting on*

29/11/2017 in which a final decision was taken to issue a order of demolition. The authority noted that the respondents had been given fair opportunity to appear before the Authority. However, the respondents have failed to appear before the Authority. The Authority also noted that there was no legal requirement on its part to issue a notice of personal hearing to any of the parties as the same was waived by the parties and consent was recorded in Hon'ble NGT order dated 10/11/17. Therefore, the authority decided to uphold its order of demolition dated 28/03/2018 as it has followed due procedure in terms of order of Hon'ble NGT dated 10/11/2017".

AND WHEREAS, in terms of decision taken in the 183rd GCZMA meeting held on 31/08/2018 an order dated 20/09/2018 was issued to the respondent thereby confirming the demolition order earlier issued by GCZMA.

AND WHEREAS, vide letter dated 08/10/2018 Mr. Sagardeep Sirsaikar forwarded a copy of order dated 01/10/2018 passed in appeal bearing no.231/2018 filed against order dated 20/09/2018 issued by GCZMA. Copies of representations dated 29/01/2018, 16/08/2018, 03/09/2018 and 08/10/2018 filed by respondent is annexed hereto and marked as **Annexure A colly**.

AND WHEREAS, the Hon'ble NGT, New Delhi vide order dated 01/10/2018 in the aforementioned appeal has interalia directed as follows: "1. It is stated that the present appeal is identical to the matter dealt with by this Tribunal vide order dated 01.10.2018 in Appeal No. 195/2018 in the matter of Sagardeep Sirsaikar & Ors. Vs. Goa Coastal Zone Management Authority & Ors. 2. In view of above, we direct that the present appeal will also be covered by the said order to the extent applicable and the appellant may appear before the Goa Coastal Zone Management Authority (GCZMA) for the purpose on 09.10.2018 at 11:00 a.m. 3. The GCZMA may send a report to this Tribunal by email at filing.ngt@gmail.com on or before 16.10.2018. 4. Put up the matter on 23rd October, 2018 alongwith Appeal No. 195/2018. 5. There will be also an interim order of status quo till the next date in same terms."

AND WHEREAS, in this regard, the GCZMA has now decided to call the parties for personal hearing on 12 /10/2018 at 3.30 p.m. onwards.

NOW THEREFORE, you are hereby required to remain present for the personal hearing or depute your duly authorized representative with all the documents, approved site plans and other related documents if any in support of your case/ structure before the Authority, 2nd floor, Conference Hall, Secretariat, Porvorim-Goa on the scheduled date, failing which the Authority shall proceed exparte in the matter.

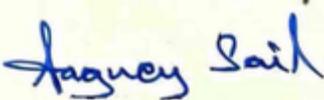


(Ravi Jha , IAS)
Member Secretary (GCZMA)

To,

1. Mr.Sagardeep Sirsaikar, R/o 308, Welcome Rest, Chapora, Dabolwado, Anjuna, Bardez, Goa- 403509.

2. Mr.Jaiprakash Sirsaikar, R/o 308, Welcome Rest, Chapora, Dabolwado, Anjuna, Bardez, Goa- 403509.
- 3 ✓ Mr.Audumber Sirsaikar, R/o Badem, Assagao, Bardez- Goa and also R/o 308, Welcome Rest, Chapora, Dabolwado,Anjuna, Bardez, Goa- 403509.
4. Mr. Kashinath Jairam Shetye, A-102, Raj Excellency Patto, Raibandar, Goa .
5. Mr. Rajan Savllo Ghatе, D 3, Second floor, Bhavani Appartments, Behind Maruti Temple, Mapusa, Bardez- Goa.
6. Mr. Jose Lopes, C/o Martha Coutinho, R/o H.no. 153, Carmit Wado, Post Box St Cruz, Mercedes wadi, Tiswadi, Ilhas -Goa.



ANNEXURE - R2/5

29

IN THE COURT OF THE DEPUTY COLLECTOR & SUB-DIVISIONAL OFFICER,
SUB-DIVISION MAPUSA GOA

Case No. DC/MUND/APL/46/2002

Shri Audumber Sirsaikar
R/o. Chapora, Bardez, Goa.

.... Appellant

V/s.

1. Mrs. Cecelia Lisbon,
2. Mr. Francis Lisbon,
3. Mr. Vincent Lisbon,
4. Mrs. Mealy F. Almeida,
5. Mr. Cerdic Almeida,
All represented by Attorney Holder,
Shri Krishna Savlo Ghate,
R/o. Socol Waddo, Assagao,
Bardez, Goa.

.... Respondents

J U D G M E N T

By this Judgment and Order this court shall dispose off appeal filed by the appellant wherein appellant has challenged the order dated 15/07/2002 passed by the Ld. Joint Mamlatdar -III, Mapusa, Goa in Case No. Jt-III/MND/ASSAGAO/3/99.

The brief facts of the present proceedings is that the issue was referred for decision of Mamlatdar is that "whether defendant proves is a mundkar of plaintiffs with respect of the said hut under Sub-Division 6 of Survey No. 25 of Assagao?"

And upon hearings both the parties, Ld. Joint Mamlatdar has concluded that the applicant has failed to prove that he is a mundkar of a suit house.

Contd...2.

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Upon perusal of the records and the proceedings of the file and written arguments filed by both the parties it has noticed that the respondents has failed to step into the witness box but have only examined one witness by name Balkrishna Tukaram Malwankar. The name of the applicant's mother also reflect in I and XIV Form which proves that the applicant's mother was residing in suit house with fixed habitations prior to appointed date so also it is collaborated by the other documents namely death certificate and medical certificate on record shows the address being Assagao. Death Certificate of applicant's mother also shows that she was expired in the year 1984. The application submitted by the applicant dated 04/10/1978 clearly brings out that the statement made by her mother that she is a mundkar of Joseph Franscisco Lisbon from last 30 years so also it has also stated by her that she was staying in Badem -Assagao in Survey No. 25 although the house number is not mentioned in the application. This documents has gone unchallenged and the fact applicant's mother was residing in a suit dwelling house established from plaint in para 4 wherein the respondent's landlord made the statement that in Survey Plan structures shown under Sub-Division No. 6 the said subject has mentions as hut in Form I and XIV the structure was made of palm leaves and occupied by Smt. Kesari Gunaji Shirsaiakar the said woman was staying in the said structure at the time of survey operations. There is also an admission in para 5 of the plaint that Smt. Kesari is the mother of defendant i.e., Audumbar Shirsaiakar who is an appellant herein. Ld. Joint Mamlatdar has concluded in his judgment that the applicant is son of Kesari Gunaji Shirsaiakar relying upon the admission made by the parties.

In my opinion findings of Ld. Joint Mamlatdar particularly on the issue of fixed habitations relying upon electoral rolls and finding fault with the same by ignoring other documentary evidence and statement on record has resulted into

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-3-

...ating the findings which is contrary to the evidence on record and therefore such findings are not sustainable. For a reason that the applicant in support of his case has examined three witnesses namely Audumber Shiva Dhonde, Raya Bhiku Khorjuvekar and Tukaram Laxman Narvekar. In I and XIV Form in respect of suit dwelling house indicates the name of applicant's mother in Other Right Column, death certificate and medical certificate of mother of appellant on records shows the address is that of suit property. The resolution of Village Panchayat Assagao on record to release water and electricity connection to the suit house. The application dated 04/10/1978 filed by the applicant's mother to declare her as a mundkar merely because the name of the applicant's mother does not reflect in electoral roll it cannot be inclined to accept the contentions of the respondent that the applicant's mother is not staying in the suit house. The admission on the part of landlord regarding the fact that the applicant's mother was residing in the suit house along with the evidence of the applicant and three witnesses is sufficiently enough to counter the name appearing in the electoral roll.

The respondent in their written statement took a stand that the mother of the applicant died in the year 1976 the respondent has failed to prove the same. Apart from this fact it is pertinent to note that the respondent nor the power of attorney did not step into the witness box as in the proceeding before the Ld. Joint Mamlatdar such adverse inference against the respondent is drawn and concluded that respondent has failed to establish the contentions in the defence raised by them.

The respondent has also made the futile attempts of raising the contentions that it is required to decided as to whether applicant proves that he is a mundkar.





The appellant is claiming the mundkarial right through his mother which he claims even before Hon'ble Civil Court is that his mother was staying in a hut as a mundkar till her death in the year 1984 and since from her death the suit hut is in the possession of appellant as it is necessary to determine first whether mother of the appellant who is said to have been staying in a suit house from the period prior to liberation of Goa which is coming within the perview of term "Mundkar" of Goa Daman and Diu Mundkar (Protection from Eviction) Act, 1975 and if so, her son who claims to have been staying with her mother and also claim that the suit hut is in his possession after the death of his mother and can step in the suit of his mother.

The appellant's witness viz. Audumber Shiva Dhonde has deposed that the mother of applicant who was known Kesari was living in a suit house and he was repairing the same and has also died in the suit house. This witness has also given the name of other mundkars in his cross-examination. This witness has not been shaken.

The another witness by name Raya B. Khorjuvekar has also supported the case of the applicant by deposing that the appellant's mother known as Kesari was died in suit house.

The another witness by name Tukaram Laxman Narvekar has also supported the case of the applicant the applicant's mother name prior to marriage was Kesari and after marriage she was known by name Savitri and that applicant's mother was residing in suit house along with applicant. He also stated that applicant's mother has died in the suit house.

KA

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Keeping in the view that mundkarial legislation is the beneficial legislation considering the records and proceedings of the file it has concluded that the applicant has proved that his mother is the mundkar of the suit dwelling house and that the applicant being her son is entitled to declare that he is the mundkar of the suit dwelling house. As per Section 2(p) of Goa Daman and Diu Mundkar (Protection from Eviction) Act 1975. Mundkar means a persons with consent of Bhatkar or person acting or purporting to act on behalf of Bhatkar reside with a fixed habitation in a dwelling house with or without obligations to render any services to Bhatkar and includes the member of the family..... Further explanations to the said Section states that person shall be deemed to be lawfully reside with the consent of Bhatkar in a dwelling house if such a person resides in it for a period exceeding one year prior to appointed date and Bhatkar has not initiated any proceedings during the said period of one year to evict such person from the dwelling house through the competent court of law on the ground that such a person was a trespassers or having so initiated such proceedings, does not succeed in obtaining the decree for eviction of such persons.

As per Section 2 (n) member of family means

- 1) In relation to a mundkar who is individual his spouse, son, unmarried daughter and includes father, mother, grandson, widowed daughter, widowed granddaughter solely dependent on mundkar for maintenance.

Admittedly it is established in the proceeding with evidence that the applicant is the son of Smt. Kesari Gunaji Sirsaikar, was residing as a mundkar and applicant residing with the mother as a mundkar of the family and the case of the applicant therefore comes within the definition of mundkar under section 2 (p) and member of the family defined in the section 2(n).

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-6-

In view of discussion had in above passes the following order:-

ORDER

The appeal filed by the appellant is allowed and the order on which appeal is filed, passed by the Ld. Joint Mamlatdar is quashed and set aside.

Pronounced in the open Court.

Given under my hand and seal of this Court on this 8th day of March, 2016.



(Signature)
(Pundalik V. Khorjuvekar)
Deputy Collector & S.D.O.,
Mapusa Sub-Division,
Mapusa - Goa.

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(Signature)
Deputy Collector
Mapusa Sub-Division
Mapusa - Goa.

Jagney Sain

ANNEXURE - R2/6(colly)**BEFORE THE ADDITIONAL DIRECTOR OF PANCHAYAT-I,
PANAJI-GOA.**

Panchayat appeal No.86/2010

Shri Audumber Sirsaikar
r/o Badem, Assagao,
Bardez-Goa.

...Appellant

V/S

1. Village Panchayat of Assagao,
Though its secretary/Sarpanch,
Bardez-Goa.

2. Cecelia Lisbos
Through her duly constituted Attorney
Shri Krishna Ghate
Residing at House No. 448,
Badem, Assagao, Bardez-Goa.

...Respondents

JUDGEMENT

By this judgment and order I shall dispose off the appeal filed by the appellant under section 66(7) Goa Panchayat Raj Act, 1994, challenging the impugned notice cum demolition order Vide No. VP/ASS/2010/2011/221 dated 27/5/2010 issued by respondent No.1 Panchayat whereby the Panchayat has directed the appellant to demolish the disputed structure of the appellant within 15 days from receipt of the said order.



Justice

The litigation between the appellant and respondent has long history and perhaps started as early as in the year 1997. The dispute

between the appellant and the respondent No.2 has gone up to the High Court on several occasions and the last order of the Hon'ble High Court was passed on 1/7/2010 in Writ Petition No. 667/2009 filed by the Respondent No.2 herein by which order the Hon'ble High Court has directed the respondent NO.1 Panchayat to consider the application of the appellant for Regularisation on its own merits and for other directions.

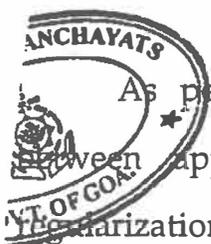
Pursuant to above order of the Hon'ble High court in above mentioned writ petition the respondent No.2 filed application for intervention in the present appeal and by my order dated 28/9/2010 the Respondent No.2 was allowed to intervene in the present appeal and added as Respondent No.2.



The present appeal arises on account of passing of impugned demolition notice cum order No. VP/ASS/2010/2011/221 dated 27/5/2010 passed by the Respondent No.1 under section 66(4) of Goa Panchayat Raj Act, 1994 and the same is challenged in this appeal.

The case of the appellant is that, the appellant was occupying a hut which was existing in the property of the respondent No.2 surveyed under survey No.25/6 of the village Assagao. The said hut was converted by appellant into a Pucca structure and the said structure is in dispute. The claim of the respondent was that said

structure is totally new structure and she had prayed for its demolition. Altimetry the appellant filed his application for regularization of the said structure, however the panchayat did not consider the said representation of the appellant on the ground that, the said structure falls in CRZ area and NOC from he concern department has not been received /submitted by the appellant. On the allegation that the Panchayat was not taking action for demolition of said structure, the respondent No.2 had approached High court by Writ Petition No.514/07 wherein the Hon'ble High Court passed necessary order directing the Panchayat to pass the appropriate order in said application of the appellant in accordance with the law after giving the appellant opportunity of being heard.



As per the appellant, there were several correspondence between appellant and respondent as regards the issue of regularization of the said structure and the respondent Panchayat directed the appellant to produced the NOC from G.C.Z.M.A. The appellant ultimately furnished to the respondent No.1 the NOC/Sanction dated 27/2/2009 granted by G.C.Z.M.A. However it is submitted by Panchayat that, On 5/8/2009 the Panchayat received a letter from G.C.Z.M.A. stating that the matter in respect of said structure of the appellant has been referred to the Dy. Collector and S.D.O. Mapusa for enquiry and accordingly the above ex-post facto sanction/N.O.C. granted by G.C.Z.M.A. dated 27/2/2009 was kept in

K. S. [Signature]

abeyance by G.C.Z.M.A. Therefore the respondent Panchayat also by its resolution dated 14/8/2009 resolved to keep the decision as regards the regularization of the structure of the appellant in abeyance till the receipt of decision of the Dy. Collector & SDO.

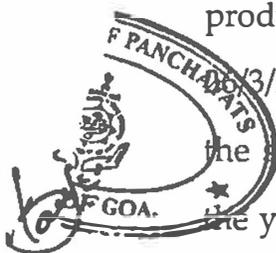
In spite of above admitted factual position the respondent Panchayat by its impugned notice cum order dated 27/5/2010 has directed the appellant to demolish the said structure within 15 days of the said order. The impugned order states that the Panchayat had kept in abeyance the regularization of the appellants structure for want of NOC from GCZMA and has further stated that the respondent has also filed writ petition in the High Court seeking directions to this Panchayat to demolish the said structure and that since till date no permission is received from CRZ authority there is no point waiting for such NOC and accordingly pass the impugned order 27/5/2010.



* The said impugned notice cum order dated 27/5/2010 was stayed by this authority by its order dated 28/6/2010. The Hon'ble High Court also observed that the impugned order has been stayed by this authority. Subsequently the Hon'ble High Court by its order dated 1/7/2010 passed in Writ Petition No. 667/209 has directed the panchayat to consider the application of the appellant for regularization. Therefore the respondent Panchayat has to consider

the application of the appellant for Regularisation and decide the same on its own merits. Therefore the legal conclusion is that the impugned order passed by the panchayat is bad in law.

Besides the above legal position, it is admitted fact that the Panchayat was all along insisting upon the appellant the NOC from G.C.Z.M.A. for the purpose of regularization and the said NOC dated 27/2/2009 in fact was furnished to the Panchayat both by the appellant as well as by GCZMA. The only defense of the respondent panchayat is that the said NOC was kept pending by GCZMA by its letter dated 5/8/2009 directing the panchayat to keep its NOC in abeyance till report of the SDO is received by it. The appellant has produced on record the report of Dy. Collector and SDO dated 29/3/2010 which was submitted to G.C.Z.M.A. on 29/3/2010. As per the said report the structure of the appellant existed much prior to the year 1972 i.e. much before the promulgation of survey. However its states that, the plan of the said structure has not been approved by G.C.Z.M.A. It is admitted fact and it can be seen for said report that, an endorsement of receipt has been made on the said report by G.C.Z.M.A. on 29/3/2010, therefore from the above report it is clear that the said structure of the appellant was not altogether new structure but was existing much prior to 1972.

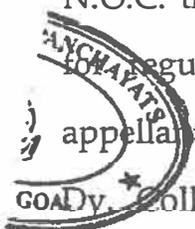


It is admitted position that the G.C.Z.M.A. received the report of Dy. Collector and SDO dated 26/3/2010 on 29/3/2010. However it is not known as to whether the G.C.Z.M.A. has intimated to the Panchayat that it has received said report. In fact the G.C.Z.M.A. immediately upon said report ought to have informed the Panchayat that its directions to keep its sanction dated 27/2/2009 to keep in abeyance stands cancelled on account of receipt of said report. However the since the G.C.Z.M.A. id not party to the present appeal said fact could not be verified. However the Panchayat has also not stated categorically that it has not received such report. For this fault of GCZMA the appellant cannot be penalized. The said report of Dy. Collector and SDO dated 26/3/2010 has been produced on record by the appellant and as per appellant the said report was also produced in Writ Petition No. 667/09. It is admitted position that the village panchayat was the party to the said Writ Petition No.667/2009 and therefore it is presumed that the village Panchayat must have also received the said report of Dy. Collector and SDO.

Despite of the fact that the report of Dy. Collector and S.D.O. dated 26/12/2010 was received by the panchayat as well as G.C.Z.M.A. the Panchayat ought not to have issued the impugned notice cum order but ought to have considered the application of the appellant fro regularization. However as the Panchayat kept the application of the appellant for regularization in abeyance on the

ground that there was no N.O.C. from G.C.Z.M.A. and further in spite of report of the Dy. Collector & SDO has alleged that there is no point in waiting for enquiry report of the Dy. Collector and S.D.O. and stating that no relevant documents for regularization are produced by the appellant. It is an admitted fact that, the appellant did produce on record the NOC from G.C.Z.M.A. and further the report of the Dy. Collector and S.D.O. has also given clear finding that the structure of the appellant existed since prior to the year 1972 and it was not altogether new structure erected by the appellant.

Since the only objection of the respondent Panchayat for regularization was that no NOC has been granted by the G.C.Z.M.A. and since it is admitted position that G.C.Z.M.A. has granted its N.O.C. the only conclusion is that the Panchayat have no objection to regularization of said structure of the appellant. Since the appellant has produced the required NOC from GCZMA and also Dy. Collector and SDO has observed that the structure of the appellant was old structure, the impugned order passed by the Panchayat is without application of mind and looks like has been passed only because this authority had issued notice to the Panchayat under section 50 of Goa Panchayat Raj Act, 1994, for violating earlier orders of this authority. Therefore it is clear that, the impugned notice cum order issued by the respondent Panchayat is without application of mind and without proper interpretation of the



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documents produced on record by the appellant and therefore the impugned order is liable to be quashed and set aside.

In view of above I pass the following order.

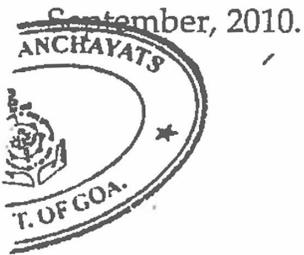
ORDER

The appeal is allowed and consequently the Impugned order No. VP/ASS/201/221 dated 27/5/2010 is quashed and set aside.

The Village Panchayat is further directed to consider and decide the application of the Appellant for regularization within a period of 30 days from the date of receipt of this order.

Pronounce in open court.

Given under my hand and the seal of this office on 29th day of



(D. B. Shanke)

Additional Director of Panchayat-I
Margao-Goa.

Jagney Sain

-- TRUE COPY --



CNR NO.GANG010009872011

Presented on : 20.06.2011

Registered on : 21.02.2013

Reserved on : 29.11.2022

Decided on : 30.11.2022

Duration: Days Months Years

09 09 09

**IN THE COURT OF ADHOC DISTRICT JUDGE-1,
FTC, NORTH GOA, MAPUSA.**

(Before: Smt. Sharmila Patil, Adhoc District Judge-1, FTC,
North Goa, Mapusa)

Civil Revision Appln. No.6/2013

Ms. Cecelia Lisboa,

Through her duly constituted

Attorney Mr. Krishna Ghate,
Resident of House No.648,
Badem, Assagao, Bardez Goa.Applicant

Versus

1. The Addl. Director of Panchayats,
with his office at Junta House,
Panaji, Goa.

2. Audumbar Gunaji Sirsaikar,
Badem, Assagao, Bardez Goa.

3. Village Panchayat of Assagao,
Represented by its Secretary,
with its office at Assagao,
Bardez, Goa. ...Respondents.

Appellant represented by learned Advocate Shri D. V. Parab.

Respondent no.1 and 3 absent.

Respondent no.2 represented by Learned Advocate Shri G.
Malik.

J U D G M E N T

**(Delivered on this the 30th day of the month of November,
of the year 2022)**

1. This is a Civil Revision Application against the Judgment and Order dated 29.09.2010 (shall be referred to as the impugned Order) of the Additional Director of Panchayat-I, Panaji Goa in Panchayat Appeal No.86/2010 under Section 201(b) of the Panchayat Raj Act 1994.

2. The applicant was the respondent no.2 and the respondent no.2 was the appellant and the respondent no.3 was the respondent no.1 before the Ld. Additional Director of Panchayats and therefore, shall be referred to as per their status before the Ld. Additional Director of Panchayats.

3. **Case of the appellant:-** The appellant filed the regular appeal under Section 66(7) of the Goa Panchayat Raj Act,1994 being aggrieved by the demolition notice cum Order bearing no.V.P./ASS/2010/2011/221 dated 27.05.2010 issued by the respondent no.1 under Section 66(4) of the Goa

Panchayat Raj Act. In the past the respondent no.1 had passed resolutions dated 17.01.2008, 28.02.2008, 26.06.2008, 13.08.2008, 28.03.2009, 16.05.2009 and 14.08.2009 with respect to the suit structure. After the Order dated 26.11.2007 passed by the Hon'ble High Court in Writ Petition No.410/2007 wherein the respondent no.1 was pleased to withdraw its Order dated 14.02.2007 and thereafter the appellant submitted his plans and documents for regularization of repair carried out to his existing structure in survey no.25/6 of village Assagao.

4. After several correspondences between the appellant and the respondent no.1 as regards to the regularization, the Respondent no.1 Panchayat directed the appellant to produce the NOC from the Goa Coastal Zone Management Authority and the appellant furnished the copy of the ex-post facto sanction dated 27.02.2009/28.02.2009 to the Respondent no.1 Panchayat. The respondent no.1 received a letter on

05.08.2009 from the Goa Coastal Zone Management Authority stating that the matter has been referred to the Deputy Collector for inquiry on a complaint filed by one Krishna Ghate and ex-post facto sanction granted has been kept in abeyance by them.

5. On similar lines, the Respondent no.1 Panchayat in its resolution dated 14.08.2009 resolved to keep the decision as regards approval for regularization in abeyance till the decision of the Mamlatdar and SDO, Bardez was rendered. The respondent no.1, therefore, has exceeded its jurisdiction in passing the impugned Order.

6. All the impugned Orders have been passed at the behest of one Krishna Ghate who is in inimical terms with the appellant and has got his house in the vicinity from the suit house of the appellant and his entire aim is to grab the property which is in occupation and possession of the appellant.

7. That said Krishna Ghate acting as a Power of Attorney has also filed a Writ Petition bearing no.667/2009 in the Hon'ble High Court of Bombay at Goa seeking demolition of the suit structure. Appellant has been subjected to constant harassment by the said Krishna Ghate on account of its personal vengeance against the appellant and the respondent no.1 is purportedly acting on his behalf.

8. The suit structure sought to be regularized is the subject matter of several proceedings, some of which are disposed and some of which are still pending. The respondent no.1 has passed the impugned Order in ignorance of facts and other proceedings and ought to have acted only in terms of the Rules under the Village Panchayat Building Rules which provide for regularization and not exceeded its jurisdiction by directing demolition. That the respondent no.1 ought to have been mindful of the Order dated 16.08.2001 passed by the

Hon'ble High Court in Civil Revision Application
No.135/2001.

9. The respondent no.1 in addition has taken no resolution prior to passing of the said impugned Order and moreover, copies of the panchanama dated 24.07.1998 and the Inspection Report dated 23.10.2007 have not been furnished to the appellant all of which ex-facie vitiates the impugned Order.

10. The respondent no.2 got herself impleaded in the said appeal filed by the appellant by way of an application which came to be granted by Order dated 29.09.2010.

11. **The case of the respondent no.2:-** That she is the land owner of the land under Survey no.25/6 of Village Assagao and on her complaint made to the respondent no.1 that the appellant had constructed an illegal structure in the respondent no.2's property, the respondent no.1 was pleased to issue show cause notice on 26.05.1998 and the

panchanama was drawn on 24.07.1998 alongwith a sketch showing the offending structure which consists of laterite stone pucca construction admeasuring approximately 5.45 meters x 4.35 meters with mangalore tile roof. That she has got photographs taken of a hut which existed in the property prior to the suit structure which has been constructed.

12. By communication dated 15.11.1996 by the Associate Town Planner, Mapusa, Goa addressed to the respondent no.1 was informed that the existing suit structure was made of wooden poles and palm leaves and situated within the CRZ area. The said communication also directed the respondent no.1 to see that no repairs or construction is carried out in place of the hut without the approval of the authorities under the Environment Protection Act. The respondent no.1 after considering the reply of the appellant passed an Order under Section 66 of the Goa Panchayat Raj Act directing demolition of the structure referred to in the panchanama which Order

was carried in appeal by the applicant to the Director of Panchayats bearing appeal No.127/1998 which was dismissed upholding the Order of demolition.

13. However, since no action was taken to demolish the illegal structure, the respondent no.2 filed the Writ Petition No.94/2004 on the basis of which the applicant who had applied for regularization of the structure before the respondent no.1 Panchayat, the panchayat was directed to decide the application within three weeks of the Order and in the event no demolition was carried out. The Director of Panchayats was directed to demolish the structure.

14. That the Goa Coastal Zone Management Authority constituted under the Environment Protection Act by its communication dated 15.11.2001 informed that it has not granted any approval for the illegal structure which was within the No Development Zone and could not be regularized by any of the authorities. Since the illegal

construction was not regularized, the Director of Panchayats was required to act upon the Order and accordingly, the officer of the BDO communicated to the respondent no.1 vide memo dated 16.11.2005 that the illegal structure which was clearly shown on the sketch annexed to the panchanama drawn in the year 1998 had not been removed from the site and accordingly, called upon the Secretary of the respondent no.1 to submit the report of compliance but no action was taken and therefore, once again by memo dated 13.01.2006 the said BDO called for the report from the Secretary.

15. On 27.02.2006 the BDO, in its letter addressed to the Deputy Director of Panchayats North Goa noted therein that the secretary of the respondent no.3 was not disclosing the truth about the matter and was declining to place before the BDO the exact position of the file with regard to the offending structure.

16. That thereafter the Director of Panchayats took charge of the matter and by memo dated 20.04.2006 addressed to the secretary of the respondent no.1 held that the secretary of the respondent no.1 has committed a dereliction of his duties in refusing to implement the Orders of this Hon'ble Court and directed the respondent no.1 to take immediate action with the BDO to report on the said action.

17. Thereafter by memo dated 29.06.2006 written by the Deputy Director of Panchayats to the BDO, forwarding the complaint made by the respondent no.2 about the inaction of the authority to implement the orders of this Hon'ble Court, the BDO was directed to inspect the site and confirm whether the direction of this Hon'ble Court has been complied with.

18. Thereafter by memorandum dated 29.09.2006 the Director of Panchayats directed the BDO to ascertain the position of the structure on site as per the original panchanama carried out by the respondent no.1 on

24.07.1998 which was annexed to the letter of the Director of Panchayats for implementation.

19. By communication dated 17.11.2006 the BDO informed the office of the Director that on inspection of the site, the illegal structure recorded in the panchanama dated 09.07.1999 is still existing at site and admeasures 5.50 x 4.10 x 2.60 meters. It was also recorded by the BDO in the said letter dated 17.11.2006 that the structure consist of walls of laterite stones, sand, cement and a roof of Mangalore tiles. It was thus, clear that till that date the original illegal structure under panchanama dated 24.07.1998 continued to stand at side and till date, has not been demolished.

20. The respondent no.2 had made innumerable attempts to have the Director of Panchayats to take action of demolition of the illegal structure but had failed to obtain compliance.

Finally the Director of Panchayats by memo dated 23.07.2007 directed the BDO to demolish the illegal

construction and to report compliance of the same within 15 days of the said memo.

21. That despite of this memo no demolition of the illegal structure standing at the site as depicted on the panchanama dated 24.07.1998 was carried out. It appears that the respondent no.1 has actively connived with the appellant, who has constructed the structure illegally while the Director of Panchayats has till date failed to implement the orders of this Hon'ble Court and the original order of demolition dated 14.09.1998 referred to the structure in panchanama dated 24.07.1998.

22. That since none of the authorities acted in accordance with law to implement their own orders and directions of this Hon'ble Court, the respondent no.2 filed Writ Petition No.514/2007 before the Hon'ble High Court. During the pendency of the said petition was placed before this Hon'ble Court was pleased, by its Order dated 23.10.2007, to direct

the Director of Panchayats to inspect the illegal structure/site and report to this Hon'ble Court as to whether the structure was still existing or not. Accordingly, an inspection was held out and plans were drawn by the office of the Director of Panchayats and clearly, the said structure which was illegally constructed, and of which panchanama was drawn up in the year 1998, was still existing at site.

23. That in the said Writ Petition No.514/2007 the Director of Panchayats filed a further report dated 26.10.2007 where, after inspection it was stated that no licenses had been issued by the respondent no.1 or GCZMA or Town Planner, for the illegal construction, after recording a statement of the Sarpanch and Secretary of the respondent no.1. That in the said Report/Affidavit that the illegal structure at the site was the same as shown in the panchanama drawn by the respondent no.1 in July, 1998 and that the appellant had only removed some projections from the said illegal structure.

That therein the file for regularization applied for by the appellant had been forwarded by the respondent no.1 to the concerned Departments but no licenses had been issued by the respondent no.1 since no approvals were granted by the concerned Departments i.e. GCZMA and Town Planner.

24. That alongwith the affidavit of the Director of Panchayats in Writ Petition 514/2007 the Director of Panchayats filed a Report of the Secretary of the Village Panchayat of Assagao, Shri Babu Shirodkar wherein the Sarpanch of the respondent no.1 has stated that the respondent no.1 had resolved to regularize the structure of the appellant with the resolution dated 30.07.2004 for which the application of appellant for regularization, had been forwarded to the concerned authorities by the respondent no.1.

25. Further, by letter dated 17.12.2005 addressed by respondent no.1 to the appellant, it was informed that the

concerned files for regularization had been forwarded for approval to the concerned department and that till date, respondent no.1 had not issued any permissions to the appellant for the illegal construction as no approvals had been received from the said department.

26. That the Hon'ble High Court, by its Order dated 26.11.2007, disposed of Writ Petition No.514/2007 observing therein that the Report of the Director of Panchayats discloses that structure of the appellant was unauthorized. The order further noted that the respondent no.1 had not issued any orders on the application for regularization since "No Objection Certificate" from the concerned department had not been received or been submitted by the appellant. The Hon'ble High Court was pleased to direct the respondent no.1 to pass orders on the application of the appellant seeking regularization within 12 weeks from the Order after hearing the respondent no.2 and the appellant.

27. That since respondent no.1 did not comply with the Order dated 26.11.2007 of this Hon'ble Court, contempt application bearing no.5/2008 was filed before the Hon'ble High Court against Shri Victor de Souza and Shri Babu Shirodkar, respectively, the Sarpanch and Secretary of respondent no.1 at the relevant time. The Hon'ble High Court by its order dated 24.07.2009 held that the petition did not answer the ingredients of contempt, namely that the acts of the above referred persons were willful by way of disobedience and accordingly, disposed of the petition.

28. That in the affidavits filed by the said Shri Victor de Souza and Shri Babu Shirodkar it was stated that he impugned structure had been regularized but the said fact was not brought to the notice of the Hon'ble High Court. However, the above referred persons did not produce before the Hon'ble High Court any license from the panchayat or any other competent authority including GCZMA and Town

Planner by which the said illegal structure had been regularized.

29. That she applied to the respondent no.1 for copies of any regularization application that may have been filed by the appellant for the said illegal structure. The respondent no.1 replied that the appellant had applied for regularization of the illegal structure only on 26.03.2009 and that no regularization application had been filed by appellant from 1997 till 2008. It was also stated by respondent no.1 that no action had been taken by it with respect to the illegal structure of the appellant.

30. That alongwith the above referred information, respondent no.1 also furnished copies of an approval dated 27.02.2009 granted by GCZMA for repairs/renovation, whereby GCZMA appears to have proceeded with the approval on the basis that the structure is an old one shown on the survey plan, taken up for repairs. The said approval

was obviously granted on a misrepresentation by the appellant and it does not appear from the record that the GCZMA was informed about the Hon'ble High Court's earlier orders or the order of demolition of respondent no.1 and Director of Panchayats holding the structure to be illegal. It is also denied that the said illegal structure was shown on the survey plan, as claimed by the appellant and represented to the GCZMA.

31. In the mean time the respondent no.2 on coming to know of the said order, immediately filed an application before the GCZMA for recall of the said order dated 27.02.2009 since the same was obtained on the basis of fraud and consequently, GCZMA immediately directed the appellant, by letter dated 05.08.2009 with a copy to respondent no.1, that the approval had been kept in abeyance till and inquiry was held by the Deputy Collector, Mapusa Bardez Goa into the allegations made by the respondent no.2.

32. In the meanwhile the respondent no.2 also approached the Town Planner with an application under the Right to Information Act seeking details of approvals, if granted, to the illegal structure of the appellant and the Town Planner, by its letter informed the Petitioner that no approval had been granted to the illegal structure but it had raised several objections including that the structure on the survey plan does not tally with that shown on the site plan. Clearly the illegal structure is not shown on the official government survey, it being illegal and without any permission from any authority.

33. That on the documents produced herewith and referred to above it is evident that the illegal structure constructed by the appellant described and referred to in the panchanama of the respondent no.1 dated 24.07.1998 has been constructed contrary to the provisions of the Panchayat Raj Act, Town Planning Act and the Coastal Regulation Zone, Regulations.

34. In the meanwhile the application of the appellant before the Mamlatdar, claiming to be the Mundkar of the illegal house and for a declaration to that effect was dismissed by Order dated 15.07.2002, which was carried in appeal before the Deputy Collector, Mapusa who set aside the said Order remanding the matter back to the Mamlatdar. On a Revision application filed by the respondent no.2 against the Order dated 30.12.2003 of the Deputy Collector, before the Hon'ble Administrative Tribunal being Mundkar Revision Application No.15/2004, the Administrative Tribunal, by Judgment dated 30.07.2010 allowed the revision application upholding the Judgment of the Mamlatdar, finding that the appellant has not been able to prove that he is a mundkar of the said illegal structure.

35. After hearing both the parties the Ld. Additional Director of Panchayat by the impugned Order allowed the appeal and consequently the Order no.VP/ASS/201/221 dated

27.05.2010 was quashed and set aside and the respondent no.1 was further directed to consider and decide the application of the appellant for regularization within a period of 30 days from the date of the receipt of the Order.

36. Being aggrieved by the impugned Order, the respondent no.2 is in Revision before this Court on the grounds mentioned at para 33 of the Revision Application.

37. Heard arguments. The Ld. Advocate for the respondent no.2 has placed on record his written arguments.

38. I have gone through the records and proceedings and have duly considered the arguments advanced by the learned advocates for both the parties. After going through the material before me, the point that falls for my determination alongwith their findings is given as under:-

POINTS FOR DETERMINATION	FINDINGS
1. Whether the impugned Judgment and Order is illegal, perverse, having exceeded	No

<p>the jurisdiction vested in the Ld. Additional Director of Panchayats?</p>	
--	--

And if yes

Requires interference?

39. I now proceed to give reasons to the above findings.

REASONS

40. The admitted facts are that the respondent no.1 had directed the appellant to produce on record the NOC from the GCZMA which the appellant ultimately furnished to the respondent no.1 dated 27.02.2009 granted by the GCZMA. It is the admitted fact that the respondent no.1 received a letter from the GCZMA on 05.08.2009 stating that the matter in respect to the said structure of the appellant has been referred to the Deputy Collector and SDO Mapusa for inquiry and accordingly, ex-post facto sanction/NOC granted by GCZMA dated 27.02.2009 was kept in abeyance by them.

41. It is also an admitted fact that the respondent no.1 also by its resolution dated 14.08.2009 resolved to keep the

decision as regards to the regularization of the structure of the appellant in abeyance till the receipt of the decision of Deputy Collector and SDO.

42. It is also an admitted position that this structure is shown in the survey plan and is also shown in Form I and XIV pertaining to the suit property and the house stands in the name of the mother of the appellant in the other rights column. Admittedly, there are mundkarial proceedings which are pending between the appellant and the respondent no.2. During the arguments, the Ld. Advocate for the appellant submitted that the mundkarial issue has been decided in favour of the appellant and the Deputy Collector's Report shows that the house exists on the same plinth area. He has produced on record the Order dated 08.03.2016 by way of an application for production of additional document which substantiates this case of the appellant.

43. It is seen from the records that inspite of these admitted facts that the sanction/NOC by the GCZMA was kept in abeyance and so also, the respondent no.1 resolved to keep the decision pending as regards the regularization of the structure of the appellant the impugned Order of demolition dated 27.05.2010 was issued by the respondent no.1. If the impugned Order of demolition is perused it would show that the Panchayat had taken the said decision on the grounds that the respondent no.1 had kept in abeyance the regularization, however, the respondent had filed the Writ Petition in the Hon'ble High Court seeking directions to the Panchayat to demolish the said structure and that since till date no permission is received from the CRZ authority, there is no point in waiting for such NOC and accordingly, passed the impugned Order for demolition.

44. It is an admitted fact that this impugned notice cum Order dated 27.05.2010 was stayed by the Additional

Director of Panchayats, Panaji vide Order dated 28.06.2010 and subsequently in Writ Petition No.667/2009 the Hon'ble High Court by its Order dated 01.07.2010 directed the Panchayat to consider the application of the appellant for regularization. Therefore, it is rightly held by the Ld. Additional Director of Panchayats that the respondent panchayat has to consider the application of the appellant for regularization and decide the same on its own merits and therefore, the impugned Order is bad in law.

45. The appellant during the course of the proceedings before the Ld. Additional Director of Panchayat had produced on record the report of the Deputy Collector and SDO dated 26.03.2010 which was submitted to the GCZMA on 29.03.2010 and as per that report the structure of the appellant is shown existing much prior to the year 1972 i.e. much before the promulgation of the survey. It mentions that

the plan of the said structure has not been approved by GCZMA.

46. It is the case of the respondent no.1 that the NOC which was given by GCZMA was kept pending till the report of SDO is received and since the report was not received the demolition Order was issued. From the report of the Deputy Collector furnished to the GCZMA although the plan of the suit structure has not been approved by the GCZMA the fact remains that the structure of the appellant is not altogether new structure but existed much prior to 1972.

47. It is rightly held by the Ld. Additional Director of Panchayats that the report of Deputy Collector dated 26.03.2010 was received by the GCZMA on 29.03.2010 but it is not known whether the GCZMA had intimated to the panchayat respondent no.1 that it had received the said report which ought to have been done by the GCZMA and since

GCZMA is not a party to the present appeal, the said fact could not be verified.

48. If the records are perused, it is nowhere the case of the respondent no.1 that they have not received such a report from the GCZMA. The report of the Deputy Collector and SDO dated 26.03.2010 which was produced on record by the appellant it is an admitted position that the suit structure is shown existing much prior to the promulgation of the survey and therefore, cannot be an additional structure as contended by the respondent no.2. Therefore, it is rightly concluded by the Ld. Additional Director of Panchayats that this report was produced in Writ Petition No.667/2009 and it is an admitted position that the Village Panchayat was a party to the said Writ Petition and therefore, it is presumed that the Village Panchayat must have also received the said report of Deputy Collector and SDO and therefore, inspite of receiving the said report, the Panchayat ought not to have received the

impugned notice cum Order but ought to have received the application of the appellant for regularization.

49. It is borne out from the records that the GCZMA had called for a report from the Deputy Collector and SDO are till than the NOC/sanction given by them was kept in abeyance and consequently, the respondent no.1 had also kept the regularization in abeyance. This report of the Deputy Collector and SDO was received by the GCZMA which shows that the suit structure was existing prior to the promulgation of survey. The Panchayat respondent no.1 was aware about this report which was produced in Writ Petition No.667/2009 wherein the Village Panchayat/respondent no.1 was a party and inspite of these facts, respondent no.1 issued the impugned notice cum Order without considering the application of the appellant for regularization.

50. It is also borne out from the records that inspite of such a report, the respondent no.1 kept the application for

regularization in abeyance basically on three grounds, firstly, being that there is no NOC from the GCZMA and secondly, that there is no point in waiting the inquiry report of the Deputy Collector and SDO and thirdly that there were no documents produced for the regularization by the appellant, without considering the report of the Deputy Collector which was received by them in Writ Petition No.667/2009. The report of the Deputy Collector to the GCZMA although was furnished, the appellant has not produced on record the NOC from GCZMA, however, the finding of the Deputy Collector that the structure of the appellant existed prior to 1972 brings on record that the structure which is shown in the survey plan and in other rights column of the Form I and XIV of the property is not a new structure altogether.

51. Thus, the Ld. Additional Director of Panchayats rightly considered that since the only objection of the respondent panchayat for regularization was that no NOC has been

granted by the GCZMA and since it is an admitted position that GCZMA has granted its NOC, the only conclusion is that the panchayat has no objection for regularization of the said structure of the appellant. It is borne out of the records that the appellant has produced the required NOC from the GCZMA and the report of the Deputy Collector and SDO which shows that the structure is not a new structure. The impugned demolition Order cum notice passed by the respondent no.1 was therefore, bad in law.

52. During the course of the proceedings, the Ld. Advocate for the appellant has placed on record the Order of the Administrative Tribunal dated 30.07.2010 with respect to the mundkarial case of the appellant, Revision before the Administrative Tribunal bearing case no.MISC/AP/268/2014/COND/MRA which is pending, application before the GCZMA for approval of plan for repairs of the suit structure which was allowed by the Order

dated 17.12.2012, copy of the plaint in RCS No.116/92/C filed by the appellant which were allowed to be produced on record by Order dated 22.02.2017.

53. Another fact which is brought in the arguments of Ld. Advocate for the appellant is that the respondent no.1 Panchayat also did not take any resolution prior to the passing of the impugned Order and also the copies of the panchanama dated 24.07.1998 and Inspection Report dated 23.10.2007 was not furnished to him.

54. It is an admitted position that this Court would interfere with the impugned Order only if it is shown that the impugned Order is perverse, illegal and that the Ld. Additional Director of Panchayats has either exceeded its jurisdiction or did not exercise its jurisdiction on sound principles of law. Considering the above discussion, to my mind, the Ld. Additional Director of Panchayat has rightly considered the case put up by both the parties, have

appreciated their respective documents and have come to a correct finding with respect to the suit structure and therefore, rightly passed the impugned Order on sound principles of law. Having said so, I conclude this point as 'No'.

55. In the backdrop, I pass the following:-

ORDER

a) The Civil Revision Application stands dismissed. Consequently, the impugned Judgment and Order dated 29.09.2010 passed by the Additional Director of Panchayat in Panchayat Appeal No.86/2010 is maintained.

b) Records and Proceedings of the Panchayat Appeal No.86/2010 shall be forwarded to the Ld. Additional Director of Panchayats-I, Panaji Goa.

c) Parties shall bear their own costs.

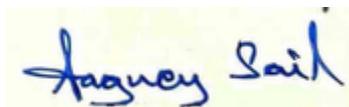
Pronounced in the open Court.

SHARMILA PATIL
PATIL

Digitally signed
by SHARMILA
PATIL
Date:
2022.12.01
14:45:38 +0530

(Sharmila A. Patil)
Adhoc District Judge-1,
FTC, North Goa,
MAPUSA.

North Goa Courts



GOA COASTAL ZONE MANAGEMENT AUTHORITY

C/o Department of Science, Technology & Environment,

Opp. Saligao Seminary, P.O. Saligao, Bardez, Goa - 403 511

Phone: (0832) 2407186, 2407187, 2407189 Fax: (0832) 2407186

Ref.No.GCZMA/N/08-09/74/1198

Date: 27/02/2009

Mr. Audumbar Sirsaikar,
Badem
Assagao-Goa.

Sub: Regularization of the reconstructed structure in bearing survey no. 26/6(Part)
of Assagao Village, Bardez taluka.

Ref: Letter from V.P.No.VP/ASS/2008-09/159 dated 10/12/2008.

Sir,

With reference to your application on the above-mentioned subject, it is hereby conveyed that this office has examined your case in 48th GCZMA sub-committee meeting held on 20/01/2009. It is observed that your old structure was repaired/reconstructed which has been verified by a Member of the Authority by conducting site inspection on 14/01/2009. It is also seen that the structure in question is an old and shown in the survey plan and has been taken up for repairs and renovation in survey No.26/6(Part) of Assagao village, Bardez taluka.

As per decision taken by GCZMA in its 48th sub-committee meeting ex-post facto permission is hereby granted to undertake repairs/renovation of the existing dwelling unit.

You are also required to obtain other relevant approvals from the Town & Country Planning Department and Village Panchayat of Assagao.

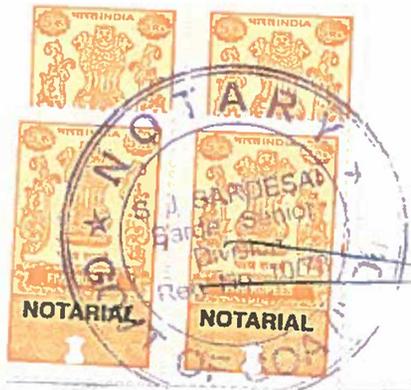
Yours faithfully,

(Michael M. D'Souza)

Member Secretary, GCZMA &
Director/Ex-Officio, Jt. Secretary (ST)

Copy to:

1. P.S. to Chief Secretary/Chairman (GCZMA), Secretariat, Porvorim-Goa.for kind information.
2. Panchayat Secretary, Village Panchayat of Assagao-Goa.



certified that this is a true copy
Deposa on 15/04/09

S. J. SARDESAI
D. A. (HONS) LL. B.
ADVOCATE & NOTARY
WAPISA - GOA

Jagney Sain

-- TRUE COPY --

GOA COASTAL ZONE MANAGEMENT AUTHORITY

C/o Department of Science, Technology & Environment, Govt. of Goa

Opp. Saligao Seminary, P.O. Saligao, Bardez, Goa - 403 511

Phone: (0832) 2407186, 2407187, 2407189 Fax: (0832) 2407186

Ref.No. GCZMA/N/08-09/74/88

Dated: 28/02/2009

To:

Mr. Audumbar Sirsaikar,
EAC, B,
Assagao - Goa.

Sub: Regularization of the reconstructed structure in bearing survey no. 26/6(Part) of Assagao village, Bardez taluka.

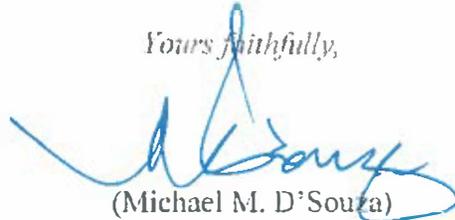
Ref: Our letter No. GCZMA/N/08-09/74/1198 dated 27/02/2009

Sir,

Refer to our to letter No GCZMA/N/08-09/74/1198 dated 27/02/2009 above mentioned subject, please be read as a "Survey no. 25/6(Part) of Assagao Village instead of Survey no. 26/6(part) of Assagao village", Bardez taluka.

This is for kind information and needful action

Yours faithfully,



(Michael M. D'Souza)

**Member Secretary, GCZMA &
Director/Ex-Officio, Jt. Secy.(STE)**

Copy to:

1. The Panchayat Secretary, Village Panchayat of Assagao, Bardez-Goa. for kind information.

Jagney Sain

-- TRUE COPY --

Office of the Dy. Collector
 Sub-Divisional Office
 Vidapsa-sub-division
 Mhargol - Goa
 Date: 06/03/2010

To
 The Member Secretary
 Goa Coastal Zone Management Authority,
 C/O Department of Science, Technology &
 Environment, Opp Saligao Seminary
 D.O. Saligao, Bardez - Goa.

**Sub: Repairs/Renovation of the existing structure in Survey No. 25/6(Part)
 of Assagao Village Bardez - Goa.**

Sir

With reference to your letter No. GCZMA/N/08-09/74/283 dated 05/08/2009 the inquiry has been conducted by summoning Shri Audumbar Sirsaikar of Assagao, Bardez - Goa as regards to the repairs/renovation in existing structure in Survey No 25/6(Part) of Village Assagao, Bardez - Goa.

Shri Audumbar Sirsaikar filed a reply stating that there was a structure existence in the Survey No. 25/6(Part) of village Assagao and the said Audumbar Sirsaikar had file a Mundkar declaration case before the Joint Mamlatdar-III of Bardez which was answered in negative by the Jt. Mamlatdar-III vide his Order dated 15/07/2002. The Respondent thereafter referred an appeal against the said Order before the Dy. Collector, Bardez and the Dy. Collector vide Order dated 30/12/2002 was pleased to set aside the order of the Jt. Mamlatdar of Bardez-III in case No. JT-III/MND/Assagao/3/99. The said Order has been challenged by Smt. Cecelia Lishoa before the Administrative Tribunal which not yet disposed by Administrative Tribunal and hence the mundkarial status of the Applicant is under challenged.

From the records from Form I & XIV and Plan bearing Survey No 25/6(Part) it appears that there was a structure existing in the said property admeasuring 25 Sq. Mts as on date of promulgation of records 1972 and same has been renovated and repaired by the said Audumbar Sirsaikar without obtaining the permission from

Contd 2

for Administrative Rodriguez

at 0

29/03/10



(Signature)

Authorized as required under the law. The said Anandhar Sirsakar obtained the permission for repairs from GCZMA Authority to the said structure vide their letter No. GCZMA/N/08-09/74/1198 dated 27/02/2009 and subsequently the same was rectified vide No GCZMA/N/08-09/74/88 dated 28/04/2009 as regards to survey number. However the plan of the said structure was not approved by GCZMA nor by the Town & Country Planning Dept. There are number of cases and complaints pending before the Authorities as regards to said structure. As regards to the said structure that one Smt Cecilia Losboa had filed a writ petition before the Hon'ble High Court.

From the records produced in the file it is ample clear that there was a structure admeasures 25 Sq mts. in Survey No.25/6 of village Assagao as on 1972 which is reflected in Survey Plan however as regards to the ownership of the said structure the same is under challenged and hence this office can not comments on the ownership.

This report is submitted to you as required by your office.

Yours faithfully



(D. M. Redkar)

Dy. Collector & Sub Divisional Officer
Mapusa-Sub-Division
Mapusa - Goa.

o/c

Jagney Sain

-- TRUE COPY --

No. DC/MAP/CRZ/29/2009/1808
Office of the Dy. Collector &
Sub Divisional Officer,
Mapusa Sub-Division
Mapusa - Goa.

Date : 26/03/2010

To,
The Member Secretary
Goa Coastal Zone Management Authority
C/o Department of Science, Technology &
Environment, Opp. Saligao Seminary
P.O. Saligao, Bardez - Goa.

**Sub : Repairs / Renovation of the existing structure in
Survey No. 25/6 (Part) of Assagao Village Bardez - Goa.**

Sir,

With reference to your letter No. GCZMA/N/08-09/74/283 dated 05/08/2009, the inquiry has been conducted by summoning Shri Audumbar Sirsaikar, R/o Assagao, Bardez - Goa as regards to the repairs / renovation in existing structure in Survey No. 25/6 (Part) of Village Assagao, Bardez - Goa.

Shri Audumbar Sirsaikar filed a reply stating that there was a structure existence in the Survey No. 25/6 (Part) of Village Assagao and the said Audumbar Sirsaikar had file a Mundkar declaration case before the Joint Mamlatdar - III of Bardez which was answered in negative by the Jt. Mamlatdar - III vide his Order dated 15/07/2002. The Respondent thereafter referred an appeal against the said Order before the Dy. Collector Bardez and the Dy. Collector vide Order dated 30/12/2002 was pleased to set aside the order of the Jt. Mamlatdar of Bardez-III in case No. JT-III/MND/Assagao/3/99. The said Order has been challenged by Smt. Cecelia Lisboa before the Administrative Tribunal which not yet disposed by Administrative Tribunal and hence the mundkarial status of the Applicant is under challenged.

From the records from Form I & XIV and Plan bearing Survey No. 25/6 (Part) it appears that there was a structure existing in the said property admeasuring 25 Sq. Mts. as on date of promulgation of records 1972 and same has been renovated and repaired by the said Audumber Sirsaikar without obtaining the permission from Authorities as required under the law. The said

Audumber Sirsaikar obtained CRZ permission for repairs from GCZMA Authority to the said structure vide their letter No. GCZMA/N/08-09/74/1198 dated 27/02/2009 and subsequently the same was rectified vide No. GCZMA/N/08-09/74/88 dated 28/04/2009 as regards to Survey number. However the plan of the said structure was not approved by GCZMA nor by the Town & Country Planning Dept. There was number of cases and complaints pending before the Authorities as regards to said structure. As regards to the said structure that one Smt. Cecilia Lisboa had filed a writ petition before the Hon'ble High Court.

From the records produced in the file it is ample clear that there was a structure admeasures 25 sq. mts. in Survey No. 25/6 of Village Assagao as on 1972 which is reflected in Survey Plan however as regards to the ownership of the said structure the same is under challenged and hence this office cannot comments on the ownership.

This report is submitted to you as required by your office.

Yours faithfully,

Sd/-

(D. M. Redkar)
Dy. Collector & Sub Divisional Officer
Mapusa Sub-Division
Mapusa - Goa

Jagney Sain

GOA COASTAL ZONE MANAGEMENT AUTHORITY

C/o Department of Science, Technology & Environment, Govt. of Goa

Opp. Saligao Seminary, P.O. Saligao, Bardez, Goa - 403 511

Phone: (0832) 2407186, 2407187, 2407189 Fax: (0832) 2407186

Ref. No.: GCZMA/N/08-09/74/1199

Date: 7/12/2012

ORDER

Whereas, the Village Panchayat of Assagao vide letter dated 10/12/2008 submitted plans for purpose of regularization of an existing house of Shri Audumber Sirsaikar in Survey No. 25/6 (part) at Badem, Assagao-Goa.

Whereas, a site inspection was conducted on 14/01/2009 by Member (GCZMA) in which it was stated that plot is within 25mtrs. from the bank of Chapora river and there exists a 6m x 4m structure of masonry walls and mangalore tiles roof which appears to have been built in recent times and that the structure has been renovated / reconstructed. It was also noted that old survey plan shows small existing structure at the site.

Whereas, proposal was considered in 48th GCZMA meeting held on 20/01/2009 and same was approved. Vide letter dated 27/02/2009 ex post facto approval was granted to repair / renovate the existing structure.

Whereas, one Shri Krishna Savlo Ghate filed a representation before GCZMA stating that the said Shri Audumber Sirsaikar has misled this Authority with false / fabricated documents. It was further alleged that said property does not belong to Shri Audumber Sirsaikar.

Whereas, the complaint and entire case details was forwarded to the Dy. Collector & SDO (Bardez) with request to conduct summary inquiry and submit report in the matter.

Whereas, in the meanwhile pending the conduct of summary inquiry, it was decided that permission granted for repairs / renovation in survey no. 26/6 (part) of Village Panchayat of Assagao be held in abeyance. This was communicated to Shri Audumber Sirsaikar vide letter dated 05/08/2009.

Whereas, Dy. Collector & SDO (Bardez) vide his report dated 26/03/2010 has stated that "From the records produced in the file it is ample clear that there was a structure admeasuring 25 Sq. mts. in Survey No. 25/6 of village Assagao as on 1972 which is reflected in Survey Plan however as regards to the ownership of the said structure the same is under challenge and hence this office can not comment on the ownership."

Whereas, Shri Audumber Sirsaikar vide letter dated 17/06/2011 made request to this Authority to withdraw letter dated 05/08/2009 holding in abeyance the approval conveyed for repairs / renovations. He cited report of the Dy. Collector & SDO (Bardez) that there exists structure at site. On the other hand Shri Krishna S. Ghate, vide his letter dated 12/07/2011 has submitted to revoke the permission as structure does not exist on survey plan and that it is purely illegal structure and does not belong to Shri Audumber Sirsaikar, which he claims as per order of Mamlatdar (Bardez), Administrative Tribunal and Hon'ble High Court of Bombay at Panaji.

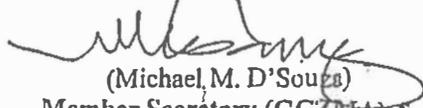
Whereas, Village Panchayat of Assagao vide letter dated 09/11/2011, enclosed a letter of Town & Country Panning Department, Mapusa dated 04/07/2011 stating that they are unable to consider the proposal of Village Panchayat of Assagao for permission to repair/renovation of the existing structure in Sy. No. 25/6(part) since GCZMA has held its permission in abeyance and also location and rear dimension of the structure is not tallying with the structure as reflected on the survey plan

Whereas, this matter was taken up before the GCZMA in its 71st GCZMA meeting held on 09/08/2012. All the above facts were brought to the notice of the Members of the Authority. It was also brought to notice the position of clause 6 (d) of the CRZ Notification, 2011 that dwelling units constructed post 1991 without approval can be considered for regularization

subject to the condition that it is purely residential dwelling units i.e. no commercial activity take place, and is not leased out or sold out to non-traditional or local inhabitants. Members noted that in this case as per the report of Dy. Collector & SDO (Bardez) there exists dwelling structure admeasuring 25 sq. mtrs. as reflected in survey plan. Site inspection conducted by a Member of Authority in 2009 also confirm that structure approximately 25 sq. mtrs. is existing on site at that relevant point of time. It was also seen that proposal was submitted by Village Panchayat of Assagao enclosing those plans submitted by Shri Audumber Sirsaikar. Hence Authority had considered the same and granted approval, ex-post facto, for repairs / renovation subject to the condition that the prior approval of TCP and Village Panchayat authority concerned be obtained. This approval was later held in abeyance. Members of the Authority perused the CRZ Notification, 2011. CRZ Notification, 2011 provides for protecting the coastal occupants, their dwelling units, their livelihood from any adversity and to take such measures to permit them to repair/renovate/reconstruct their dwelling units within the frame work of the law. It is incumbent upon the licensing authority i.e. Town & Country Planning Department and Village Panchayat to go into merits of the title of the property and/or ownership of the said structure / property. GCZMA as an Authority is required to consider the status of the structure. In this case the dwelling unit and for its protection be means of repairs/renovation/reconstruction vis-à-vis traditional occupants/dwellers who occupy the structure, so as to safe guard their housing needs. It should be noted that permission granted to any person or authority does not confirm title of ownership and the permission is in respect of provisions contained in CRZ Notification, 2011. It is for the licensing authority to check the details.

Now, therefore, it has been decided to reinstate the approval as much as the ex-post facto permission for repairs/ renovation of structure in question is concerned. It is for the TCP and Village Panchayat authority to take action in accordance to law and if they find or came to conclusion that if the structure / dwelling unit is not in accordance with the survey plan details or has been illegally constructed / unauthorizedly existing as per the Goa Panchayat Raj Act or Town & Country Planning Act and related provisions of law. Further, Shri Audumber Sirsaikar is directed to produce all documents before Village Panchayat and Town & Country Planning Authority in the matter to get this grievance regarding existence of the structure redressed.

For and on behalf of the
Goa Coastal Zone Management Authority


(Michael M. D'Souza)
Member Secretary (GCZMA) &
Director/Ex-Officio, Joint Secretary (STE)

To,

1. Shri Audumber Sirsaikar, Badem, Assagao, Bardez-Goa.
2. The Sarpanch/ Secretary, Village Panchayat of Assagao, Bardez-Goa.
3. The Senior Town Planner, Town & Country Planning Department, Mapusa-Goa.

Copy to:

P. A. to Principal Secretary (Environment) / Chairman (GCZMA), Secretariat, Alto-
Porvorim, Goa.....for kind information.

Jagney Sain

**MINUTES OF THE 186th MEETING OF THE GOA COASTAL ZONE MANAGEMENT
AUTHORITY (GCZMA) HELD ON 12/10/2018 (FRIDAY) AT 3:30 P.M. IN THE
CONFERENCE HALL, 2ND FLOOR, SECRETARIAT, PORVORIM – GOA.**

The 186th meeting of the Goa Coastal Zone Management Authority (GCZMA) was held under the Chairmanship of the Secretary (Environment), on 12/10/2018 (Friday) at 3:30 p.m. in the conference hall, 2nd floor, Secretariat, Porvorim . Goa.

The following members were present for the meeting:

1. Principal Secretary (Environment) / Chairman (GCZMA).
2. Representative on behalf of Deputy Conservator of Forests, Department of Forests, Government of Goa.
3. Representative on behalf of Director, Directorate of Fisheries, Panaji, Goa.
4. Representative on behalf of Director, Directorate of Panchayat, Panaji, Goa.
5. Representative on behalf of Director, Department of Tourism, Panaji, Goa.
6. Representative on behalf of Chief Engineer, Water Resources Department (WRD), Government of Goa.
7. Representative on behalf of Director, Directorate of Settlement & Land Records, Panaji, Goa.
8. Shri. Audhut J. Bhounsule, Expert Member (GCZMA).
9. Dr. Prabhakar Shirodkar, Expert Member (GCZMA)
10. Shri. Suhas Godse ,Expert Member (GCZMA)
11. Shri. Shrirang Jambhale, Expert Member (GCZMA)
12. Member Secretary (GCZMA).

Item No. 1:

Case No. 1.1

To discuss and decide on the reports submitted by the Inquiry committee of the GCZMA after completing its inquiry interalia stating its recommendations.

Background: The present matter is part of Suo moto WP No. 02/2006 of Hon'ble High Court of Bombay at Goa. The matter was earlier placed in 115th GCZMA meeting held on 04/04/2015 wherein, the case was referred to Inquiry committee of GCZMA for detailed report.

The said matter was deliberated in 179th GCZMA meeting held on 19/07/2018 for grant of personal hearing to the all concerned parties.

Accordingly personal hearing notices issued to all the parties including complainant to appear before it on 31/07/2018. Accordingly the said matter was placed during 180th GCZMA meeting held on 31/07/2018 for grant of personal hearing, wherein the authority heard the parties and directed all the parties to file

Decision: The authority decided to grant final opportunity for hearing and fixed the matter on 26/10/2018 on principles of natural justice.

5. Proceeding in M/s Boomerang Bar Restaurant

The complainant Mrs. Judith Almeida remained present in person and respondent remained present. The respondent sought additional time to file his reply.

Decision: The authority decided to grant final opportunity for hearing and fixed the matter on 26/10/2018 on principles of natural justice.

6. Proceeding in M/s Lucky Star Ventura Fernandes

The complainant Mrs. Judith Almeida remained present in person and respondent remained present through his Advocate. The respondent sought additional time to file his reply.

Decision: The authority decided to grant final opportunity for hearing and fixed the matter on 26/10/2018 on principles of natural justice.

Case No 1.2

To discuss and deliberate upon order dated 10/08/2018 in Appeal no.61/2017 and Appeal no.62/2018 filed by Sagardeep sirsaikar and Audumber Sirsaikar.

A. Brief Background of the matter pertaining to illegal construction of house in Sy.No.25/6(part) of village Assagao, Bardez-Goa

- i. The Office of the Goa Coastal Zone Management Authority(hereinafter referred to as the GCZMA in short) was earlier in receipt of a complaint letter dated 12/01/2015 from Mr. Rajan Ghate inter alia stating that permission dated 27/12/2009 granted by the GCZMA for repair/renovation of existing structure/house to Mr.Audumber Sirsaikar has expired. Further stated that Mr. Audumber Sirsaikar is likely to start construction hence requested to withdraw/revoke the said approval or stop work. The said matter was deliberated in the 164th meeting held on 29/11/2017, the authority decided to issue demolition order to the respondent. Accordingly demolition order was issued bearing no. GCZMA/N/8-09/74/1946 dated 28/03/2018 Sagardeep Sirsaikar, Jaiprakash Sirsaikar, Audumber Sirsaikar.

The said matter was deliberated during 183rd GCZMA meeting held on 31/08/2018 wherein the authority observed that as per order dated 10/11/2017 passed by Hon'ble NGT in Original Application no.60/2017 (WZ) and Original Application no.61/2017 the service of show cause notice was waived and parties were directed to appear before GCZMA on 14/11/2017 and place on record all such

relevant material in support of their respective cases. The authority was only conferred the duty to conduct inquiry in the matter in accordance with law. Accordingly, GCZMA had convened 163rd meeting on 14/11/2017 to grant personal hearing as per order dated 10/11/2017 passed by Hon^{ble} NGT wherein respondents remained absent while the complainant was present. Thereafter, the GCZMA convened the 164th meeting on 29/11/2017 in which a final decision was taken to issue an order of demolition. The authority noted that the respondents had been given fair opportunity to appear before the Authority, however, the respondents have failed to appear before the Authority. The Authority also noted that there was no legal requirement on its part to issue a notice of personal hearing to any of the parties as the same was waived by the parties and consent was recorded in Hon^{ble} NGT order dated 10/11/17. Therefore, the authority decided to uphold its order of demolition dated 28/03/2018 as it has followed due procedure in terms of order of Hon^{ble} NGT dated 10/11/2017. In terms of decision taken in the 183rd GCZMA meeting held on 31/08/2018 an order dated 20/09/2018 was issued to the respondent thereby confirming the demolition order earlier issued by GCZMA

vide letter dated 08/10/2018 Mr. Sagardeep Sirsaikar forwarded a copy of order dated 01/10/2018 passed in appeal bearing no.231/2018 filed against order dated 20/09/2018 issued by GCZMA.

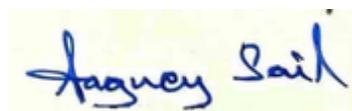
The Hon^{ble} NGT, New Delhi vide order dated 01/10/2018 in the aforementioned appeal has interalia directed as follows: *"1. It is stated that the present appeal is identical to the matter dealt with by this Tribunal vide order dated 01.10.2018 in Appeal No. 195/2018 in the matter of Sagardeep Sirsaikar & Ors. Vs. Goa Coastal Zone Management Authority & Ors. 2. In view of above, we direct that the present appeal will also be covered by the said order to the extent applicable and the appellant may appear before the Goa Coastal Zone Management Authority (GCZMA) for the purpose on 09.10.2018 at 11:00 a.m. 3. The GCZMA may send a report to this Tribunal by email at filing.ngt@gmail.com on or before 16.10.2018. 4. Put up the matter on 23rd October, 2018 alongwith Appeal No. 195/2018. 5. There will be also an interim order of status quo till the next date in same terms."*

Proceedings: The respondents remained present along with Advocate.J.A.Lobo and Complainant Shri. Kashinath Shetye remained present in person. The Respondent relied upon documents annexed to replies earlier submitted to the authority. The respondent submitted that that the said structure is a mundkarial dwelling house. Further stated that the structure is shown on Survey plan and is prior to 1991. The structure is having area of 25 sqmtrs. Further submitted that name of grandmother figures in the other rights column in the Form I & XIV. The CRZ notification is not applicable as the structure is prior to year 1991. The respondents relied upon order dated 16/08/2011 of the Hon^{ble} High Court of Bombay at Goa in Civil Revision Application no.135/2001, Application for regularization dated

28/08/2001 to Village panchayat Assagao by Shri. Audumbar Sirsaikar, Panchayat resolution dated 28/05/2003. The Complainant filed brief written arguments interalia submitted as under: 1. The respondents are not the owners of the property and only encroachers. 2. That Kesari Gunaji Sirsaikar is not related to respondents. The respondents are not legal heirs of the Kesari Gunaji Sirsaikar. 3. Property bearing syno.25/6 A belongs to one Joseph Francis POA Rajan Ghate. 4. Relied upon letter dated 06/02/2015 5. The respondents have also encroached property in which they are running a restaurant. Fisherman cannot use house for commercial hotel.

Decision: The authority heard both the parties at length and took note of various documents on record. With regard to issue of ownership of land/structure, the authority observed that N.O.C/permission granted to any proponent/ applicant by GCZMA does not confer nor confirm the The authority noted that earlier the village panchayat of Assagao vide letter dated 10/12/2008 had submitted plans for regularization of house of Shri. Audumbar Sirsaikar in Sy. No. 25/6 (Part). The said matter was placed in the 48th GCZMA meeting held on 20/01/2009, wherein the authority observed that structure was old and was repaired/ reconstructed which was verified by a member of authority by conducting a site inspection on 14/01/2009. It was noted that the structure was an old structure shown in survey plan. The authority in the said meeting decided to grant ex-post facto permission to undertake repairs/renovation of the existing dwelling unit in the Syno.25/6 (part), Assagao Village, Bardez .Thereafter, pursuant to representation from one Krishna Savlo Ghate who filed objections and sought revocation of said permission the matter was again considered at length in the 71st GCZMA meeting held on 09/08/2012 and wherein the earlier permission for repair and renovation was re-confirmed by GCZMA vide an order dated 17/12/2012. The earlier order of GCZMA dated 17/12/2012 had based records and on report of the Deputy Collector & S.D.O of Bardez dated 17/12/2012 had concluded that a structure/house with an area of 25 sq. mts was existing in Syno.25/6 (part), village Assagao, Bardez-Goa prior to 1991. Further pursuant to representation from one Shri. Rajan Savlo Ghate, the GCZMA vide letter 06/02/2015 informed Shri. Audumber Sirsaikar that approval/permission issued by authority had expired and directed not to carry out any work on site including further repair and renovation to house in Syno.25/6 (part) village Assagao, Bardez-Goa without permission from authority. Taking into consideration of the above facts, it is beyond doubt that a structure/house with an area of 25 sq. mts was existing in Syno.25/6 (part), village Assagao, Bardez-Goa prior to 1991. The same is also confirmed by the survey plan of DSLR. In view of the above, the authority decided to quash its demolition order dated 20/09/2018 and discharge the proceedings against the structure in Sy.No.25/6 (part) of village Assagao, Bardez-Goa. The authority noted that only question which remains to be ascertained now is whether any illegal extension are carried out beyond said area of 25 sqmts. Therefore, GCZMA decided to direct the Town and Country Planning Department and Village Panchayat of Assagao to check the area of the structure/house in Syno.25/6 (part), village Assagao, Bardez-Goa and submit a report to

ascertain if any illegal extensions are carried out to the structure/house in Syno.25/6 (part), village Assagao, Bardez-Goa i.e beyond said area of 25 sq mts without necessary permissions. The matter will be decided as per law based on the report from the Town and Country Planning Department and Village Panchayat of Assagao.

A handwritten signature in blue ink on a yellow rectangular background. The signature reads "Jagney Sain".

-- TRUE COPY --

AGENDA ITEMS FOR THE 186th MEETING OF THE GOA COASTAL ZONE MANAGEMENT AUTHORITY (GCZMA) TO BE HELD ON 12/10/2018 (FRIDAY) AT 3:30 P.M. IN THE CONFERENCE HALL, 2ND FLOOR, SECRETARIAT, PORVORIM – GOA.

Item No. 1:

Case No. 1.1

To discuss and decide on the reports submitted by the Inquiry committee of the GCZMA after completing its inquiry interalia stating its recommendations.

Background: The present matter is part of Suo moto WP No. 02/2006 of Hon^{ble} High Court of Bombay at Goa. The matter was earlier placed in 115th GCZMA meeting held on 04/04/2015 wherein, the case was referred to Inquiry committee of GCZMA for detailed report.

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 panchayat 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. 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 intervenor (Colva Civic Forum) in its intervention application dated 13/07/2012 bearing MCA no.635/2012. 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 action vide letter dated 15/05/2015 as referred to above at Sr.no.4. In this regard the Inquiry Committee of GCZMA completed its inquiry and submitted its report dated 19/10/2015. 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 interalia with a 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.+in the while the term of GCZMA expire and the matter was placed before

		<p>The complainant Mrs. Judith Almeida remained present in person and respondent remained present through his Advocate. Complainant produced additional documents on which she proposed to rely upon to the Authority and a copy to the respondent. Further the respondent sought time to file a reply by 28/09/2018. Accordingly, Authority took a note of the written submission made by the complainant and directed respondent to file reply by 28/09/2018.</p>
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In view of the above, the matter is placed before the Authority for grant of personal hearing to the parties.

Case No 1.2

To discuss and deliberate upon order dated 10/08/2018 in Appeal no.61/2017 and Appeal no.62/2018 filed by Sagardeep sirsaikar and Audumber Sirsaikar.

A. Brief Background of the matter pertaining to illegal construction of house in Sy.No.25/6(part) of village Assagao, Bardez-Goa

- i. The Office of the Goa Coastal Zone Management Authority(hereinafter referred to as the GCZMA in short) was earlier in receipt of a complaint letter dated 12/01/2015 from Mr. Rajan Ghate inter alia stating that permission dated 27/12/2009 granted by the GCZMA for repair/renovation of existing structure/house to Mr.Audumber Sirsaikar has expired. Further stated that Mr. Audumber Sirsaikar is likely to start construction hence requested to withdraw/revoke the said approval or stop work.
- ii. Pursuant to said complaint the GCZMA vide letter dated 06/02/2015 bearing no GCZMA/N/08-09/74/1928 had directed Mr. Audumber Sirsaikar to not to carry out any work on site including further repair and renovation to the existing dwelling unit in Sy.No.25/6(part) of village Assagao, Bardez-Goa without obtaining prior permission of GCZMA as required under CRZ Notification 2011.
- iii. The office of GCZMA was also in receipt of complaint dated 07/03/2016 from Mr. Jose Lopes with regard to the alleged illegal construction of a structures in the property bearing sy.No.25/6 of village Assagao, Bardez-Goa within CRZ limits Carried out by Kesari Gunaji Sirsaikar, Mr. Sagardeep Sirsaikar, Mr. Jaiprakash Sirsaikar.
- iv. The GCZMA was further is receipt of another complaint from Mr.Kashinath Shetye and others dated 21/03/2016 inter alia stating that there is illegal construction done in Sy.No.25/6 of village Assagao, Bardez-Goa within CRZ limits.

- v. An Original Application bearing no.60/2017 was filed by Mr.Kashinath Shetye and others interlalia being aggrieved by inaction of the authorities to act on the complaint against the said alleged illegal construction.
- vi. The aforementioned matter came up for hearing before the Hon^{ble} Tribunal wherein vide order dated 10/11/2017 it was recorded as follows: *"Heard. Perused Record. The Applicant has made grievance about construction carried out by Respondent No. 4-Sagardeep Sirsaikar and respondent No.6-Audumber Sirsaikar upon demolishing the hut of Respondent No.10 Joseph Francis Lisbo in Sy.No.25/6 of village Assagoan, Bardez-Goa onm contravention of provisions of CRZ Notification 2011. A copy dated 21st March 2016 of the complaint in that regard made to GCZMA at page 117 and 118 is annexed to the Application. Learned counsel appearing on behalf of Respondent No.8 submits that he has no role in the enquiry. Both the delinquents i.e Respondent Nos.4 to 6 and the Applicant agree to appear before the GCZMA on 14th November,2017 at 3.00 p.m. for the purpose of enquiry undertaken by the respondent No.2-GCZMA, and place on records all such relevant material in support of their respective cases and/or against the rival cases before the GCZMA on that day, and exchange the copies thereof amongst themselves. Learned counsel appearing for Respondent No.2-GCZMA submits that they shall be duly carrying out the enquiry as regards the complaint referred to by the Applicant in respect of the offending structures and taking decision thereupon in accordance with law. Service of show cause Notice by the Respondent Nos. 4 to 6 is waived. Liberty granted to Respondent No.10 Joseph Francis Lisbo to participate in the said inquiry and appear before the GCZMA on the given date and time. We, therefore direct that Respondent GCZMA shall carry out the said inquiry and take decision on the complaint of Applicant dated 10th March 2016 within eight(8) weeks, and communicate its decision to the concerned parties promptly thereafter O.A no.60/2017 stands disposed of accordingly"*.
- vii. Pursuant to aforementioned order of the Hon^{ble} Tribunal the matter was placed for personal hearing in the 163rd GCZMA meeting held on 14/11/2017. The Proceeding held in the said 163rd GCZMA meeting held on 14/11/2017 can be seen as follows:- The Applicants Mr. Kashinath Shetye was present and submitted that the parties were directed by Hon^{ble} NGT, Pune vide order dated 10/11/2017 and service of show cause notice was waived. None of the respondents remain present.
- viii. The after due deliberation and discussion of the above matter in the 163rd GCZMA meeting held on 14/11/2017 the authority noted the order passed by the Hon^{ble} NGT Pune dated 10/11/2017. The matter was kept till 6.00pm, respondents failed to remain present. The Authority decided to grant time to the respondent in consonance of principles of natural justice. The Authority decided to place the matter for further hearing on 29/11/2017.
- ix. The matter was again placed for further hearing in the 164th meeting held on 29/11/2017 can be seen as follows:- The complainant Mr. Kashinath Shetye appeared in person also another complainant Shri. Rajan Ghate appeared in person submitted ownership documents nobody appeared on behalf of Respondent however complainant informed the authority that

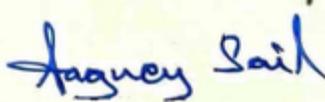
NGT directed the respondent remain present before Authority for personal hearing and respondent also agreed to be present before the Authority however after giving opportunity to the respondent 2 times Respondent didn't appear for the personal hearing before the Authority.

- x. In the 164th meeting held on 29/11/2017, the authority decided to issue demolition order to the respondent. Accordingly demolition order was issued bearing no. GCZMA/N/8-09/74/1946 dated 28/03/2018 Sagardeep Sirsaikar, Jaiprakash Sirsaikar, Audumber Sirsaikar.

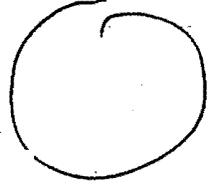
The said matter was deliberated during 183rd GCZMA meeting held on 31/08/2018 wherein the authority observed that as per order dated 10/11/2017 passed by Hon'ble NGT in Original Application no.60/2017 (WZ) and Original Application no.61/2017 the service of show cause notice was waived and parties were directed to appear before GCZMA on 14/11/2017 and place on record all such relevant material in support of their respective cases. The authority was only conferred the duty to conduct inquiry in the matter in accordance with law. Accordingly, GCZMA had convened 163rd meeting on 14/11/2017 to grant personal hearing as per order dated 10/11/2017 passed by Hon'ble NGT wherein respondents remained absent while the complainant was present. Thereafter, the GCZMA convened the 164th meeting on 29/11/2017 in which a final decision was taken to issue an order of demolition. The authority noted that the respondents had been given fair opportunity to appear before the Authority, however, the respondents have failed to appear before the Authority. The Authority also noted that there was no legal requirement on its part to issue a notice of personal hearing to any of the parties as the same was waived by the parties and consent was recorded in Hon'ble NGT order dated 10/11/17. Therefore, the authority decided to uphold its order of demolition dated 28/03/2018 as it has followed due procedure in terms of order of Hon'ble NGT dated 10/11/2017. In terms of decision taken in the 183rd GCZMA meeting held on 31/08/2018 an order dated 20/09/2018 was issued to the respondent thereby confirming the demolition order earlier issued by GCZMA

vide letter dated 08/10/2018 Mr. Sagardeep Sirsaikar forwarded a copy of order dated 01/10/2018 passed in appeal bearing no.231/2018 filed against order dated 20/09/2018 issued by GCZMA.

The Hon'ble NGT, New Delhi vide order dated 01/10/2018 in the aforementioned appeal has inter alia directed as follows: "1. It is stated that the present appeal is identical to the matter dealt with by this Tribunal vide order dated 01.10.2018 in Appeal No. 195/2018 in the matter of Sagardeep Sirsaikar & Ors. Vs. Goa Coastal Zone Management Authority & Ors. 2. In view of above, we direct that the present appeal will also be covered by the said order to the extent applicable and the appellant may appear before the Goa Coastal Zone Management Authority (GCZMA) for the purpose on 09.10.2018 at 11:00 a.m. 3. The GCZMA may send a report to this Tribunal by email at filing.ngt@gmail.com on or before 16.10.2018. 4. Put up the matter on 23rd October, 2018 alongwith Appeal No. 195/2018. 5. There will be also an interim order of status quo till the next date in same terms."



-- TRUE COPY --



Applicants:-

- 1) Mr. Audumber Sirsaikar
- 2) Mr. Jaiprakash Sirsaikar
- 3) Mr. Sagardeep Sirsaikar,
Badem Assagao, Bardez-Goa.

January 29TH 2018

To,

The Member Secretary,
Porvorim-Goa

Sub: - Representation against the proceeding of the 164th meeting of GCZMA

Sir,

- 1) From the website of GCZMA the applicant No 3 Mr Sagardeep Sirsaikar noticed that the GCZMA in its 164th meeting undertook the discussion relating the complaints of Mr Kashinath Shetye against the structure bearing H No. 308, the premises of "Welcome Restaurant" at Chapora and other structures surveyed under survey No. 25/6 at Badem, Assagao which is belonging to the applicant No.1 Mr. Audumber Sirsaikar. It has been further noticed that the proceeding has gone ex-parte as none appeared for these applicants.
- 2) These applicants state that there was no communication of the scheduled date of hearing by their advocate to any of these applicants who appeared for them in Honorable NGT at Pune in the relevant case and as such that resulted into non-appearance of these applicants in the said meeting for personal hearing.

29/01/18
O/o. Member Secretary
Goa Coastal Zone Management Authority
Dempo Towers, 3rd Floor,
Patto Panaji Goa 403001
Ph : 2438511

(57)

- 3) The applicant state that the said Mr kashinath Shetye and Mr Ghate filed false complaints due to personal vengeance against these applicants. Mr Ghate has been fighting litigations against these applicants for last over 26 years. The relevant record may be produced at the time of personal hearing if granted.
- 4) To be very brief both the structures against the said false complaint has been filed are existing even prior to the constitution of GCZMA and or the CRZ regulations of 1991 came into effect. This fact can be established by survey records, permissions of different Government authorities and more importantly by very permission / NOC issued by your office i.e. the GCZMA.
- 5) Now to be very specific about the structures existing in survey No. 25/6 it needs no emphasis to show that the very showing of existence of this structure in survey record prepared way back in the year 1972 itself sufficient to prove its existence prior to 1991. Beside the GCZMA by its order dated 17/12/2012 bearing No GCZMA / N / 08-09/74/1199 granted expos Facto regularization of the said structure. A copy of said order dated 17/12/2012 along with survey plan and form I and XIV is annexed here to for easy reference.
- 6) That apart, the applicant No 1 Mr. Audumber Sirsaikar has been declared as "Mundkar" of the said structure by the Dy. Collector of Bardez vide its order Dt 08/03/2016 passed in case No. DC/MUND/APL/46/2002. The very fact that the competent authority under Mundkar Act when declared the said structure as Mundkarial dwelling house is a very strong Judicial declaration that the said structure has been existing in the property in question prior to 1975. This judicial order is binding on Honorable GCZMA and all the issue in this regard as to its construction as raised by complainants are most dishonest and false. Thus the complaint in this regard is liable to be rejected with utmost condemnation by this authority as both the complainants are aware of the said judicial order.

(58)

- 7) Now turning to the other complaint as to other structure of "Welcome restaurant" it is stated that the GCZMA by its show cause notice dated 13/10/2015 bearing No. GCZMA/ILLE-COMPL/15/99/1737 initiated inquiry and found that this structure had been existing prior to 1991 and drop the proceedings. This inquiry was initiated pursuant to the complaint dated 08/10/2015 lodged by one Mr. Jose Lopes. Thus there cannot be double jeopardy for the same structure.
- 8) However, for satisfaction of the GCZMA this applicants place on record the documentary evidence to show that the structure Welcome Restaurant house No. 308 stands registered with the panchayat of Anjuna as back as in the year 1983. A Certificate dated 02/06/2009 is issued by the panchayat of Anjuna is annexed herewith.
- 9) Further, the applicant no1 has been running the said Welcome Restaurant prior to 1991 which would be evident from the tax levied against this business way back in the year 1990. A copy of tax receipt dated 04/10/1990 is annexed hereto for ready reference.
- 10) Further the electoral roll pertaining to the year 1988 would show the existence of the house No. 308. A copy of electoral for 1998 of 6 siolim assembly constituency roll is annexed hereto for ready reference.
- 11) Further the registration Certificate dated 22/10/1990 issued under shops and establishment Act issued for running "Welcome Restaurant" is annexed hereto for ready reference.
- 12) Further registration Certificate dated 16/10/2012 issued by directorate of food and drugs shows that the applicant no 1 has been running the said restaurant with due authority of law.

143

(59)

- 13) To Sum up both the complaints who are acting with vindictive mind are misusing these honorable authority to cause harassment to these applicants. In fact, these structures are owned by single owners the applicant Mr Audumber Sirsaikar. The applicant No. 2 & 3 are social activist working against the environmental wrong doers. The complainants have got malice against these applicants for their own vested interest.
- 14) These applicants submit that the default in their attendance of the scheduled GCZMA meetings was never willful nor volitional and deserve to be excused.

The applicants therefore pray:

- a) Consider the enclosed documents and reject the complaints of the complainants.
- b) In the event any clarification is required the honorable Authority kindly may grant one opportunity of personal hearings to the applicants in the interest of justice and principles of natural justice.

Thanking You,

Yours Faithfully



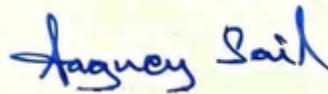
1) Mr. Audumber Sirsaikar



2) Mr. Jaiprakash Sirsaikar



3) Mr. Sagardeep Sirsaikar



-- TRUE COPY --



VILLAGE PANCHAYAT ASSAGAO

BARDEZ - GOA

ग्रामपंचायत भासगांव

वार्डश-गोवा

Ref. No. VP / Ass/ 154/97-98

Date 4-6-1997

C E R T I F I C A T E

This is to certify that as per Survey record the hut is existing in the survey number 25/6, situated at Badem, ~~Assagao~~ Assagao, Bardez-Goa, belongs to late Smt: Kesari Gunaji Sirsaiker, mother of Shri: Audumber Gunaji Sirsaiker of Badem.

This certificate has been issued at the request of Shri: Audumber Gunaji Sirsaiker.



A. D'souza
(Angela D'souza)

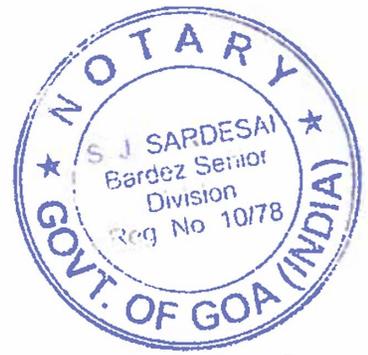
BARDEZ

Gram Panchayat Assagao

*These documents
were produced for
High Court in Mumbai
with facilities.*

Agency Sain

-- TRUE COPY --



GOVERNMENT OF GOA
Directorate of Settlement and Land Records
Office of Inspector of Survey and Land Records
MAPUSA-GOA



Issued under Goa Land Revenue (manner of conducting re-survey for the purpose of up-dating survey map) Rules , 2003.

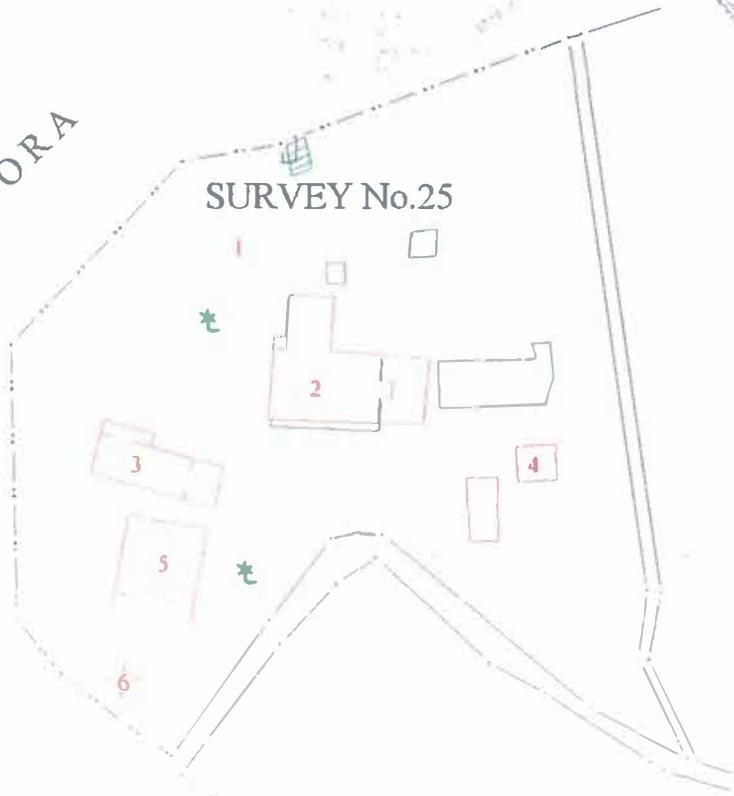
PLAN

Showing plots situated at
Village : ASSAGAO
Taluka : Bardez
Survey No./Subdivision No. : 25/ 1,2,3,4,5,6
after resurvey conducted pursuant to Section 65-A
of Goa Land Revenue Code 1968.
Scale : 1 :1000

D. Jayant
Inspector of Surveys &
Land Records
City, Ponda, Mapusa.



RIVER
CHAPORA



Legend of new features

- New Structure
- New Plinth
- New Shed

Generated By : Nitesh L Paste
On : 12-02-2011

Compared By:

D. Manojk

Jagney Sain

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26

100003661475



Date: 07/08/2014

Page 1 of 1

Taluka BARDEZ

Survey No. 25

Village

सर्वे नंबर

Assagao

Sub Div. No. 6

Name of the Field

हिस्सा नंबर

Badem

Tenure

अज्ञान नांव

सत्ता प्रकार

Cultivable Area (Ha.Ars.Sq.Mtrs) लागण क्षेत्र (हे. आर. चौ. मी.)

Dry Crop खाद्य	Garden बागवत	Rice रुई	Khajan खाजन	Ker केर	Morad मोरद	Total Cultivable Area एकूण लागण क्षेत्र
0000.00.00	0000.00.00	0000.00.00	0000.00.00	0000.00.00	0000.00.00	0000.00.00

Un-cultivable Area (Ha.Ars.Sq.Mtrs) नापिक क्षेत्र (हे. आर. चौ. मी.)

Class (a) वर्ग (अ)	Class (b) वर्ग (ब)	Total Un-Cultivable Area एकूण नापिक जमीन	Grand Total एकूण	Remarks शेरा
0000.00.00	0000.00.00	0000.00.25	0000.00.25	

Assessment : अंमल	Rs. 0.00	Foro फोर	Rs. 0.00	Predial प्रेदियात	Rs. 0.00	Rent रेंट	Rs. 0.00
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No क्रमांक	Name of the Occupant वसोव्यासना नाव	Khata No. खाते नंबर	Mutation No. फेरफार नं	Remarks शेरा
	Joseph Francis Lisbo		548	

S No क्रमांक	Name of the Tenant कुळाचे नांव	Khata No. खाते नंबर	Mutation No. फेरफार नं	Remarks शेरा
	Nil			

Other Rights अनर हक्क	Mutation No. फेरफार नं	Remarks शेरा
Name of Person holding rights and nature of rights: नाम व हक्क धरणा व सत्ता-बांध व हक्क प्रकार		
Maying by building own hul Kesari Gunaji Shirsakar	1690	

Details of Cropped Area पिकाबाबतील क्षेत्राचा तापशील

Year वर्ष	Name of the Cultivator पिका करणारा नाव	Mode रीत	Season मौसम	Name of Crop पिकाचे नांव	Irrigated बागायत	Unirrigated जिरायत	Land not Available for Cultivation कृषिनाशील		Source of Irrigation सिंचनांचा प्रकार	Remarks शेरा
					Ha.Ars.Sq.Mts हे. आर. चौ. मी.	Ha.Ars.Sq.Mts हे. आर. चौ. मी.	Nature प्रकार	Area क्षेत्र Ha.Ars.Sq.Mts हे. आर. चौ. मी.		
	Nil									

End of Report

For any further inquires, please contact the Mamlatdar of the concerned Taluka.

OFFICER IN CHARGE
LAND RECORDS
VIDE GOVERNMENT ORDER
26/1/2001 - RD (7076)
dated 22/10/2001. 7/8/14
ethinX Infocom Private Limited
Place : Mapusa - Goa

-- TRUE COPY --

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

APPEAL No. _____ of 2018
(U/s 16 of the NGT Act, 2010)

IN THE MATTER OF:

SAGARDEEP SIRSAIKAR & ORS. ...APPELLANTS

VERSUS

GOA COASTAL ZONE MANAGEMENT
AUTHORITY & OTHERS ...RESPONDENTS

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APPELLANTS

THROUGH

Aagney Sail

ADV. AAGNEY SAIL

ADVOCATE FOR THE APPELLANTS

#1393, C-1, VASANT KUNJ,

NEW DELHI – 110070

Ph. +91.9810076618

Email: aagneysail@gmail.com

Filed on: 03.10.2018
New Delhi

SYNOPSIS

The present Appeal challenges Orders dated 20.09.2018 and 28.03.2018 both passed by the Goa Coastal Zone Management Authority (GCZMA), directing demolition of the structure located in the property bearing survey no. 25/6, village Badem, Bardez, Goa within 15 days from date of receipt.

Both the impugned orders are in violation of the following:

- (i) Coastal Regulation Zone Notification, 2011.
- (ii) Rule 4(3)(a) & 4(6) of the Environment (Protection) Rules, 1986.
- (iii) Principles of Natural Justice as interpreted to be read into the procedure to be followed by a Coastal Zone Management Authority in the judgment dated 11.04.2013 of this Hon'ble Tribunal in O.A. No. 49/2012 titled 'M/s. Sesa Goa Limited v. State of Goa & Ors.'
- (iv) Order dated 10.08.2018 in O.A. No. 61/2018 passed by this Hon'ble Tribunal.

Not only was a personal hearing not given despite a specific direction of this Hon'ble Tribunal in its order dated 10.08.2018 but, the impugned order suffers from the infirmity of complete non-application of mind, as it does not record any reasons for the demolition of the structure and does not consider the averments of the Appellants filed along with documents to show that the structure existed prior to 1991.

Hence, the present Appeal.

LIST OF DATES

S.N	DATE	DESCRIPTION
1.	21.03.16	Respondent No. 4 had filed a complaint with the GCZMA alleging illegal construction of a structure in the property bearing survey no. 25/6, village Assagao, Badem, Bardez, Goa
2.	17.04.17	Respondent No. 4 along with 3 others, had also filed an Original Application before this Hon'ble Tribunal at its Western Zone bench at Pune bearing O.A. No. 60/2017 (WZ) titled 'Kashinath Shetye & Anr. Vs. Chief Secretary of Goa & Ors.' against the alleged illegal structure in the property bearing survey no. 25/6, village Assagao, Badem, Bardez, Goa.
3.	10.11.17	<p>This Hon'ble Tribunal disposed off the O.A. No. 60/2017 (WZ) with the following directions,</p> <p style="text-align: center;">" ...</p> <p>Both the delinquents i.e. Respondent Nos.4 to 6 and the Applicant agree to appear before the GCZMA on 14th November, 2017 at 3.00 p.m. for the purposes of enquiry undertaken by the Respondent No.2-GCZMA, and place on record all such relevant material in support of their respective cases and/or against the rival</p>

		<p>cases before the GCZMA on that day, and exchange the copies thereof amongst themselves.</p> <p>Learned counsel appearing for Respondent NO.2-GCZMA submits that they shall be duly carrying out the enquiry as regards the complaint referred to by the Applicant in respect of the offending structures and taking decision thereupon in accordance with Law.</p> <p>Service of show cause notice by the Respondent Nos.4 to 6 is waived.</p> <p>...</p> <p>We, therefore direct that Respondent GCZMA shall carry out the said inquiry and take decision on the complaint of Applicant dated 10th March 2016 within eight (8) weeks, and communicate its decision to the concerned parties promptly thereafter.</p> <p>O.A. No. 60/2017 stands disposed of accordingly."</p>
4.	10.11.17	<p>Counsel for the Appellants i.e. Adv. S. M. Walawaikar representing them in O.A. No. 62/2017 (WZ) had requested another advocate (Mr. Sushil S. Padhye) to appear on 10.11.2017 in the matter. Unfortunately, Adv. S. S. Padhye failed to communicate the said order and the scheduled dated of hearing of 14.11.2017 before Respondent No. 1 to the Appellants</p>

		and to Adv. S. M. Walawaikar.
5.	14.11.17	Respondent No. 1 noticing the absence of the Appellants from the meeting on 14.11.2017 adjourned the matter to 29.11.2017 but failed to send a notice to the Appellants informing them of the same.
6.	29.11.17	The Appellants could not remain present for the meeting on 29.11.2017 before the Respondent No. 1 who after recording that Respondents (i.e. Appellants herein) have not appeared despite giving two opportunities decided to issue order to the Respondents.
7.	29.01.18	In January, 2018 when the Appellants while browsing from the website of this Hon'ble Tribunal came to know of the order dated 10.11.2017 and on enquires came to know of the decision of the 164th meeting of GCZMA held on 29.11.2017. The Appellants immediately filed their written submissions on 29.01.2018 before the Respondent No. 1 giving an explanation to the reason for their absence on 14.11.2017 and 29.11.2017 also bringing on record documents showing existence of structure prior to 1991.

8.	28.03.18	Respondent No. 1 issued directions U/s 5 of the Environment (Protection) Act, 1986 r/w Rule 4 of the Environment (Protection) Rules, 1986 to the Appellants to demolish the structure in Survey No. 25/6 at Village Assagao, Badem, Bardez - Goa within 15 days from the date of receipt.
9.	03.04.18	Appellants received by post the said order dated 28.03.2018.
10.	18.04.18 & 23.07.18	The impugned order dated 28.03.18 was challenged by the Appellants before the Hon'ble High Court of Bombay at Goa in Writ Petition No. 476 of 2018 wherein vide order dated 18.04.2018 any coercive steps were stayed by the High Court. Subsequently, vide order dated 23.07.2018 the Writ Petition No. 476/2018 was withdrawn from High Court with liberty to approach this Hon'ble Tribunal.
11.	02.08.18	Appellants filed Appeal No. 62/2018 before the Western Zone bench at Pune of this Hon'ble Tribunal seeking quashing of the order dated 28.03.2018 amongst other prayers.
12.	10.08.18	This Hon'ble Tribunal disposed off the Appeal No. 62/2018 with the following directions: " ...

		<p>5. The case of the appellants is that they never received notice to appear and they could not present their view points. This is a matter which can be verified by the authority itself. The appellants can appear before the authority and present their view point.</p> <p>6. If the authority is satisfied that the appellant did not receive any notice, the said authority may give an opportunity to the appellants to present their view point and pass appropriate orders in accordance with law.</p> <p>7. To enable the appellants to approach the concerned authority, we direct that status quo be maintained for a period of four weeks from today.</p> <p>The appeals stand disposed of accordingly."</p>
13.	16.08.18 & 03.09.18	Appellants communicated the order dated 10.08.2018 passed in Appeal No. 62/2018 to the Respondent No. 1 authority vide letter dated 15.08.2018 requesting for a hearing to be given. As there was no response received from the Respondent No. 1 authority the letter dated 15.08.2018 was served again as a reminder to the Respondent No. 1 on 03.09.2018.
14.	31.08.18	GCZMA i.e. Respondent No. 1 in its 183rd meeting held on 21.08.2018 in compliance of this Hon'ble Tribunal's

		order dated 10.08.2018 passed in Appeal No. 62/2018 held that despite the Respondents (i.e. Appellants herein) been given fair opportunity to appear before the Authority they have failed to appear and that the Authority decided to uphold its order of demolition dated 28/03/2018 as it has followed due procedure in terms of order of Hon'ble NGT dated 10/11/2017.
15.	20.09.18	Order No. GCZMA/N/08-09/74/1070 issued by the GCZMA directing demolition of the structure located in the property bearing survey no. 25/6, village Assagao, Badem, Bardez, Goa.
16.	29.09.18	Hence, the present Appeal.

APPELLANTS

THROUGH

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Filed on: 03.10.2018

New Delhi

VERSUS

1. GOA COASTAL ZONE MANAGEMENT AUTHORITY

(GCZMA),

THROUGH ITS MEMBER SECRETARY,

Ist FLOOR, PANDIT DEENDAYAL UPADHYAY BHAVAN,

NEAR PUNDALIK DEVASTHAN,

PUNALIK NAGAR, PORVORIM,

GOA - 403521.

...RESPONDENT NO. 1

2. STATE OF GOA,

THROUGH ITS CHIEF SECRETARY,

GOVERNMENT OF GOA,

OFFICE AT SECRETARIAT,

PORVORIM, GOA - 403521. ...RESPONDENT NO. 2

3. DY. COLLECTOR & S.D.O. OF BARDEZ,

OFFICE OF DY. COLLECTOR & S.D.O. OF BARDEZ,

MAPUSA, GOA - 403507. ...RESPONDENT NO. 3

4. KASHINATH SHETYE,

R/O A-102, RAJ EXCELLENCY,

RIBANDAR, GOA - 403006. ...RESPONDENT NO. 4

5. JOSE LOPES,

R/O H. NO. 153, CARMIT W ADDO,

P.O. BOX. ST. CRUZ.,

MERCES WADI, TISWADI,

GOA - 403005

...RESPONDENT NO. 5

6. RAJANSAVLLO GHATE,

D-3, II FLOOR, BHAVANI APTS.,

BEHIND MARUTI TEMPLE, MAPUSA,

BARDEZ, GOA - 403507

...RESPONDENT NO. 6

APPELLANTS

THROUGH

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Filed on: 03.10.2018
New Delhi

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

APPEAL No. _____ of 2018

IN THE MATTER OF:

SAGARDEEP SIRSAIKAR & ORS. ...APPELLANTS

VERSUS

GOA COASTAL ZONE MANAGEMENT
AUTHORITY & OTHERS ...RESPONDENTS

MOST RESPECTFULLY SHOWETH:

- 1) The address of the Appellants is as given above, for the service of notices of this appeal and that of their legal representative is Flat No. 1393, C-1, Vasant Kunj, New Delhi - 110070.

- 2) The addresses of the Respondents are as given above for service of notices of the applicant.

- 3) That the Appellants above named beg to present this Memorandum of Appeal challenging the Order No. GCZMA/N/08-09/74/1070 dated 20.09.2018 AND Order No. GCZMA/N/08-09/74/1946 dated 28.03.2018 both issued by the Goa Coastal Zone Management Authority (hereinafter referred to as "GCZMA"), the Respondent No. 1 herein, directing demolition of the structure located in the property bearing survey no. 25/6, village Assagao, Badem, Bardez, Goa within 15 days from date of receipt.

True and correct copies of the GCZMA orders dated 20.09.2018 along with postal envelope which was received by Appellants on 24.09.2018 and order dated 28.03.2018 are hereto marked and annexed as **ANNEXURE – A1(colly)**.

FACTS IN BRIEF:

It is most respectfully showeth:

- 4) That the Appellants are in possession of the properties surveyed in survey No. 25/6, Village Assagao, Badem, Bardez, Goa. In fact, the Appellant No. 3 has been declared to be Mundkar (a person who works in the property of another, plants trees, raises plantations and protects it) of the said property and the same is used by the Appellants during festivals and by Appellant No. 1 who sleeps there after finishing the day's work. Hence, it is contented that the said structure is existing prior to 1990.
- 5) That the Respondent No. 4 had filed a complaint dated 21.03.2016 with the GCZMA alleging illegal construction of a structure in the property bearing survey no. 25/6, village Assagao, Badem, Bardez, Goa. A True and correct

copy of the complaint dated 21.03.2016 is hereto marked and annexed as **ANNEXURE - A2.**

6) That the Respondent No. 4 along with 3 others, on 17.04.2017 had also filed an Original Application before this Hon'ble Tribunal at its Western Zone bench at Pune bearing O.A. No. 60/2017 (WZ) titled 'Kashinath Shetye & Anr. Vs. Chief Secretary of Goa & Ors.' against the alleged illegal structure in the property bearing survey no. 25/6, village Assagao, Badem, Bardez, Goa. In this O.A. No. 60/2017 the Appellants herein were made party Respondent Nos. 4 to 6 respectively, and were represented by counsel Adv. S. M. Walawaikar. This Hon'ble Tribunal on 10.11.2017 disposed off the O.A. No. 60/2017 (WZ) with the following directions,

" ...

Both the delinquents i.e. Respondent Nos.4 to 6 and the Applicant agree to appear before the GCZMA on 14th November, 2017 at 3.00 p.m. for the purposes of enquiry undertaken by the Respondent No.2-GCZMA, and place on record all such relevant material in support of their respective cases and/or against the rival cases before the GCZMA on that day, and exchange the copies thereof amongst themselves.

Learned counsel appearing for Respondent NO.2-GCZMA submits that they shall be duly carrying out the enquiry as regards the complaint referred to by the Applicant in respect of the offending structures and taking decision thereupon in accordance with Law.

Service of show cause notice by the Respondent Nos.4 to 6 is waived.

...

We, therefore direct that Respondent GCZMA shall carry out the said inquiry and take decision on the complaint of Applicant dated 10th March 2016 within eight (8) weeks, and communicate its decision to the concerned parties promptly thereafter.

O.A. No. 60/2017 stands disposed of accordingly."

A true and correct copy of the said order dated 10.11.2017 passed in O.A. No. 60/2017 (WZ) is hereto marked and annexed as **ANNEXURE - A3.**

- 7) That it is pertinent to mention that the counsel for the Appellants i.e. Adv. S. M. Walawaikar representing them in O.A. No. 60/2017 (WZ) had requested another advocate (Mr. Sushil S. Padhye) to appear on 10.11.2017 in the matter. It is submitted that Adv. S.S. Padhye during the proceedings on 10.11.2017 in this matter waived service of show cause notice of the meeting of 14.11.2017 (at 3pm) before the Respondent No. 1, on behalf of the Respondent Nos. 4 to 6 i.e. the Appellants herein. Unfortunately, Adv. S. S. Padhye failed to communicate the said order and the scheduled date of hearing of 14.11.2017 before Respondent No. 1 to the Appellants and to Adv. S. M. Walawaikar. A true and correct copy of the affidavit of Adv. S. S. Padhye dated

02.08.2018 is hereto marked and annexed as

ANNEXURE – A4.

- 8) That as explained in paragraph no. 7 above the Appellants being unaware could not be present for the scheduled meeting on 14.11.2017 at 03:00pm at Respondent No. 1. The Respondent No. 1 noticing the absence of the Appellants from the meeting on 14.11.2017 adjourned the matter to 29.11.2017 but failed to send a notice to the Appellants informing them of the same. The decision that was taken by the Respondent No. 1 during its meeting held on 14.11.2017 is given below:

“Decision: Authority noted the order passed by the Hon’ble NGT Pune dated 10/11/17. The matter serve kept till 6.00 pm, respondents failed to remain present. Authority decided to grant time to the respondent in consonance of principles of natural justice. The Authority decided to place the matter for further hearing on 29/11/2017.”

A true and correct copy of the relevant extract of the minutes of the 163rd meeting of the GCZMA held on 14.11.2017 is hereto marked and annexed as

ANNEXURE – A5.

- 9) That resultantly, the Appellants could not remain present for the meeting on 29.11.2017 before the Respondent No. 1. The Respondent No. 1 GCZMA on 29.11.2017 after

recording that Respondents (i.e. Appellants herein) have not appeared despite giving two opportunities decided to issue order to the Respondents. A true and correct copy of the relevant extract of the minutes of the 164th meeting of the GCZMA held on 29.11.2017 is hereto marked and annexed as **ANNEXURE – A6.**

- 10) That it is pertinent to mention that neither the decision of the 164th meeting of GCZMA held on 29.11.2017 nor the minutes were communicated to the Appellants by the Respondent No. 1. It is only in January, 2018 when the Appellants while browsing from the website of this Hon'ble Tribunal came to know of the order dated 10.11.2017 and on enquires came to know of the decision of the 164th meeting of GCZMA held on 29.11.2017. The Appellants immediately file their written submissions on 29.01.2018 before the Respondent No. 1 giving an explanation to the reason for their absence on 14.11.2017 and 29.11.2017. The Appellants brought on-record the following documents pertaining to the subject property establishing its existence prior to 1991:

S.N.	Document	Date
1.	Survey Plan of Survey No. 25/6 obtained from the Land Records office showing that structure is pre-existing on the date of preparation in 1972.	12.03.13

2.	Form No. I & XIV from the Register of Cultivators issued of Survey No. 25/6 showing residence of mother of Appellant No. 3 Smt. Kesari Gunaji Shirsakar by building own hut with mutation No. 1690.	07.08.14
3.	<p>Judgment of Dy. Collector & S.D.O., Sub-Division Mapusa, Goa declaring Appellant No. 3 as Mundkar of Survey No. 25/6 relying on the following evidence:</p> <p>a) Resolution of Village Panchayat Assagao to release water and electricity connection</p> <p>b) Application dated 04.10.1978 of mother of Appellant No. 3 to declare her as mundkar of owner of Survey No. 25/6 since last 30 years.</p>	08.03.16
4.	<p>GCZMA order allowing repairs/renovation of the structure located in Survey No. 25/6 relying on the following documents:</p> <p>a) Village Panchayat of Assagao letter dt. 10.12.08 submitting plans for regularization of existing structure.</p> <p>b) Dy. Collector & SDO (Bardez) report dated 26.03.10 acknowledging existence of structure as on 1972.</p> <p>c) Clause 6(d) of the CRZ 2011 that dwelling units constructed prior to 1991 without approval can be considered for regularization subject to condition that it is purely residential dwelling unit.</p>	22.10.90
5.	Village Panchayat of Assagao certificate that existing structure in survey 25/6 belongs to mother of Appellant No. 3.	04.06.97

The written submissions dated 29.01.2018 also prayed for grant of one opportunity of personal hearing. True and correct copies of the written submissions dated 29.01.2018 along with its annexures are hereto marked and annexed as **ANNEXURE - A7(colly)**.

- 11) That on 28.03.2018 the Respondent No. 1 issued directions U/s 5 of the Environment (Protection) Act, 1986 r/w Rule 4 of the Environment (Protection) Rules, 1986 to the Appellants to demolish the structure in Survey No. 25/6 at Village Assagao, Badem, Bardez - Goa within 15 days from the date of receipt.

- 12) That on 03.04.2018 the Appellants received by post the said order dated 28.03.2018. The same was challenged by the Appellants before the Hon'ble High Court of Bombay at Goa in Writ Petition No. 476 of 2018 wherein vide order dated 18.04.2018 any coercive steps were stayed by the High Court. Subsequently, vide order dated 23.07.2018 the Writ Petition No. 476/2018 was withdrawn from High Court with liberty to approach this Hon'ble Tribunal. True and correct copies of orders dated 18.04.2018 and 23.07.2018 passed in Writ Petition No.

(19)

476/2018 by High Court of Bombay at Goa are hereto marked and annexed as **ANNEXURE – A8(colly)**.

13) That thereafter on 02.08.2018 the Appellants filed Appeal No. 62/2018 before the Western Zone bench at Pune of this Hon'ble Tribunal seeking quashing of the order dated 28.03.2018 amongst other prayers. A true and correct copy of the Appeal No. 62/2018 along with its index is hereto marked and annexed as **ANNEXURE – A9**.

14) That vide order dated 10.08.2018 this Hon'ble Tribunal disposed off the Appeal No. 62/2018 with the following directions:

" ...

5. The case of the appellants is that they never received notice to appear and they could not present their view points. This is a matter which can be verified by the authority itself. The appellants can appear before the authority and present their view point.

6. If the authority is satisfied that the appellant did not receive any notice, the said authority may give an opportunity to the appellants to present their view point and pass appropriate orders in accordance with law.

7. To enable the appellants to approach the concerned authority, we direct that status quo be maintained for a period of four weeks from today.

The appeals stand disposed of accordingly."

A true and correct copy of the order dated 10.08.2018 passed by this Hon'ble Tribunal in Appeal No. 62/2018 is hereto marked and annexed as **ANNEXURE - A10.**

- 15) That the Appellants on 16.08.2018 communicated the order dated 10.08.2018 passed in Appeal No. 62/2018 to the Respondent No. 1 authority vide letter dated 15.08.2018 requesting for a hearing to be given. As there was no response received from the Respondent No. 1 authority the letter dated 15.08.2018 was served again as a reminder to the Respondent No. 1 on 03.09.2018. True and correct copy of the letter dated 15.08.2018 is hereto marked and annexed as **ANNEXURE - A11.**

- 16) That thereafter the GCZMA i.e. Respondent No. 1 in its 183rd meeting held on 21.08.2018 in compliance of this Hon'ble Tribunal's order dated 10.08.2018 passed in Appeal No. 61/2018 held that despite the Respondents (i.e. Appellants herein) been given fair opportunity to appear before the Authority they have failed to appear and that the Authority decided to uphold its order of demolition dated 28/03/2018 as it has followed due procedure in terms of order of Hon'ble NGT dated 10/11/2017. A true and correct copy of the extract of

minutes of the 183rd meeting of the GCZMA held on 31.08.2018 is hereto marked and annexed as

ANNEXURE – A12.

GROUND:

17) That the present Appeal is made on the basis of the following, among other grounds:

19.1 Because the GCZMA i.e. the Respondent No. 1 in their order dated 20.09.2018 and in their 183rd meeting erred in holding that,

“...The authority noted that the respondents had been given fair opportunity to appear before the Authority. However, the respondents have failed to appear before the Authority...”

It is submitted that the GCZMA never gave a fair opportunity to the Appellants to appear in its 164th meeting held on 29.11.2017. The decision to adjourn the complaint against the Appellants to 29.11.2017 was taken in the 163rd meeting of the Authority held on 14.11.2017 as the Appellants were not present. Though the adjournment to 29.11.2017 is justified by the Authority in its decision as,

“Extract of Minutes of 163rd meeting.

...Decision:- Authority noted the order passed by the Hon'ble NGT Pune dated 10/11/17. The matter serve kept till 6.00 pm, respondents failed to remain present. Authority decided to grant time to the respondent in consonance of principles of natural justice. The Authority decided to place the matter for further hearing on 29/11/2017."

Unfortunately, the decision to grant time to the Respondents (i.e. the Appellants herein) in consonance of principles of natural justice was not followed by any communication (written or otherwise) of its decision taken at the 163rd meeting of adjourning the matter for further hearing on 29.11.2017. In addition, the absence of the Appellants from the 163rd meeting held on 14.11.2017 was due to no fault of their and was because of their counsel. This was explained in paragraph no. 2 of the written submissions dated 29.01.2018 submitted to the Authority. However, the Authority failed to consider the same while passing its order dated 28.03.2018. Hence, it is clarified that the finding recorded that "*respondents had been given fair opportunity to appear before the Authority.*" is a wrong appreciation of facts and error committed by the Authority.

19.2 Because, the impugned order dated 20.09.2018 and the decision taken in the 183rd GCZMA meeting held on 31.08.2018 are ex facie bad in law, manifestly irregular, arbitrary and patently erroneous inasmuch as it has been issued without the due process of law and *inter alia*, in violation of the principles of natural justice. One of the principles of natural justice is audi alteram partem which has been explained by this Hon'ble Tribunal in judgment dated 11.04.2013 of this Hon'ble Tribunal in O.A. No. 49/2012 titled 'M/s. Sesa Goa Limited v. State of Goa & Ors.' wherein it was held that,

"...

21. In the present case we are concerned with the application and the various facets of the maxim audi alteram partem. The Courts have consistently emphasized that this is a highly effective rule devised by the Courts to ensure that a statutory authority arrives at a just decision and it is calculated to act as a healthy check on the abuse or misuse of power.

22. The doctrine of audi alteram partem has three basic essentials. Firstly, a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard. Secondly, the authority concerned should provide a fair and transparent procedure and lastly, the authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order."

It is submitted that in the instant case, the Appellants have been grossly condemned inasmuch as that the impugned order has been issued without affording an opportunity of hearing to the Appellants. This is pronounced by the fact that the Respondent No. 1 was directed vide order dated 10.08.2018 of this Hon'ble Tribunal passed in Appeal No. 60/2018 to allow the Appellants to appear before them and hear their view point in order to verify non-receipt of notice. The order of 10.08.2018 states,

"...

5. The case of the appellants is that they never received notice to appear and they could not present their view points. **This is a matter which can be verified by the authority itself. The appellants can appear before the authority and present their view point.**

6. If the authority is satisfied that the appellant did not receive any notice, the said authority may give an opportunity to the appellants to present their view point and pass appropriate orders in accordance with law.

7. To enable the appellants to approach the concerned authority, we direct that status quo be maintained for a period of four weeks from today.

The appeals stand disposed of accordingly."

19.3 Because the Respondent No. 1 i.e. the GCZMA was wrong in holding in the impugned order dated 20.09.2018 that,

"...The Authority also noted that there was no legal requirement on its part to issue a notice of personal hearing to any of the parties as the same was waived by the parties and consent was recorded in Hon'ble NGT order dated 10/11/17..."

In this regard, it is submitted that the above mentioned finding of the Respondent No. 1 is contrary to the judgment dated 11.04.2013 of this Hon'ble Tribunal in O.A. No. 49/2012 titled 'M/s. Sesa Goa Limited v. State of Goa & Ors.' wherein it was held that,

"...

Legal Analysis

11. From the grounds of challenge as well as the contentions raised, it clearly emerges that the main plank of submission on behalf of the applicants revolves around the non-compliance of the principles of natural justice.

12. The Notification dated 19th February, 1991, was superseded by the Notification dated 15th September, 2010/6th January, 2011, issued by Department of Environment and Forest and Wildlife, Government of India. This Notification deals with 'high tide line' on the landward side along the sea front as well as restriction on the setting up and expansion of industries, operations or processes and the like, in the CRZ (Coastal Regulation Zone). It also declares certain activities as 'prohibited activities' within the CRZ.

13. A plain reading of this Notification clearly shows that it does not by specific language provide for any procedure for taking action against the violators of the restrictions or even the manner in which the

Authority will proceed if it finds that any activity, or act or omission has been done in violation to the said Notification. It is a settled cannon of administrative law that if a specific procedure has not been provided for and the authority empowered to perform such functions passes orders which particularly may have severe consequences affecting the rights of others, then it can only do so in compliance with the principles of natural justice and the absence of the same would invite judicial review and would render such action invalid in law. Thus, first and foremost it must be understood as to what is Law of Natural Justice.

...

17. It must be noticed that the aim of rules of natural justice is to secure justice, or to put it negatively, to prevent miscarriage of justice. Despite the fact that such rules do not have any statutory character, their adherence is even more important for the compliance of the statutory rules. The violation of the principles of natural justice has the effect of vitiating the action, be it administrative or quasi-judicial, in so far as it affects the rights of a third party. Flexibility in the process of natural justice is an inbuilt feature of this doctrine. Absolute rigidity may not further the cause of justice and therefore adoption of flexibility is important for applying these principles.

18. A Court or a Tribunal has to examine whether the principles of natural justice have been violated or not as a primary consideration, whenever and wherever such an argument is raised. Test of prejudice is an additional aspect. Normally, violation of principles of natural justice, like non-grant of hearing, would vitiate the action unless the theory of 'useless formality' is pressed into service and is shown to have a complete applicability to the facts of the case. We may notice that this theory, though has been accepted by the Courts, but is rarely applied.

...

20. The above findings of the Court puts one matter beyond ambiguity, i.e., the affected party is entitled to a full and fair opportunity, and such an opportunity, shall, both in fact and in substance, be granted to ensure that justice is not only done but also seems to have been done."

19.4 Because the Respondent No. 1 authority while upholding and reaffirming its earlier demolition order dated 28.03.2018 failed to appreciate that the said order did not record any reasons for arriving at its decision of ordering demolition of the Appellants structure. The only reasons that can be gathered from the order dated 28.03.2018 is based on the decision taken in the 164th meeting of GCZMA held on 29.11.2017 which states that,

" ...

Proceeding: Complainant Mr. Kashinath Shetye appeared in person also another complainant Shri Rajan Ghate appeared in person and submitted ownership documents nobody appeared on behalf of Respondent however complainant informed the authority that NGT directed the respondent to remain present before the Authority for personal hearing and respondent also agreed to be present before the Authority however after giving opportunity to the respondent 2 times Respondent didn't appeared for the personal hearing before the Authority.

Decision: Authority decided to issue order to the respondent."

Hence, there is no reasoning given in the decision taken. The decision taken does not even mention demolition of the Appellants structure. Even worse, there is no finding

recorded in this decision dated 28.03.2018 holding that the structure on the property of the Appellants is held to be in violation of some section/rule of the CRZ Notification, 2011.

In this regard reliance is placed on 'M/s. Sesa Goa Limited v. State of Goa & Ors.' (supra) wherein it was held by this Hon'ble Tribunal that,

" ...

27. The consistent view of the courts has been that recording of reasons is an essential feature of the principles of natural justice. Natural justice cannot be understood in isolation. It must be examined while keeping in mind the facts and circumstances of a given case. As already noticed, violation of principles of natural justice and its consequences in law would always be relatable to a situation in a given case. Providing of notice, giving a fair opportunity to put forward its case and to record reasons are the essential features of the doctrine of natural justice. It is neither permissible nor prudent to permit violation of these rules and prejudice, though is a relevant consideration, may not always be an indispensable aspect. The cases in which, ex facie, a serious violation of principles of natural justice is shown, the Court or the Tribunal may declare the action invalid and ineffective, even in absence of proven prejudice.

28. Another very important aspect of recording of reasons by administrative or quasi-judicial authority is that the reasons so recorded must have a nexus and should deal with the grounds which have been raised by the affected party for consideration by such authority. Recording reasons without dealing with such contentions would tantamount to non-recording of reasons. The authority concerned is expected to apply its mind to all aspects of a case but most

importantly to the contentions raised by the affected party in relation to the grounds or supporting arguments without which no adverse order could be passed against such party. If such grounds are not dealt with in the order passed by the authority, neither the party nor the appellate authority would be able to comprehend as to why their contentions have been rejected, as the reasons are harbinger between the mind of the maker of the order, to the controversy in question and the decision or conclusion arrived at. This is the acid test for examining fair opportunity and proper application of mind by the authority concerned."

19.5 Because the Respondent No. 1 authority failed to consider the documents brought on record by the Appellants to show that the alleged illegal structure on the said property was existing prior to 1991. These documents were submitted vide their written submissions dated 29.01.2018 which in all fairness should have been considered considering that no personal hearing was accorded. These documents included the following:

S.N.	Document	Date
1.	Survey Plan of Survey No. 25/6 obtained from the Land Records office showing that structure is pre-existing on the date of preparation in 1972.	12.03.13
2.	Form No. I & XIV from the Register of Cultivators issued of Survey No. 25/6 showing residence of mother of Appellant No. 3 Smt. Kesari Gunaji Shirsakar by building own hut with mutation No. 1690.	07.08.14
3.	Judgment of Dy. Collector & S.D.O., Sub-Division Mapusa, Goa declaring	08.03.16

	<p>Appellant No. 3 as Mundkar of Survey No. 25/6 relying on the following evidence:</p> <p>c) Resolution of Village Panchayat Assagao to release water and electricity connection</p> <p>d) Application dated 04.10.1978 of mother of Appellant No. 3 to declare her as mundkar of owner of Survey No. 25/6 since last 30 years.</p>	
4.	<p>GCZMA order allowing repairs/renovation of the structure located in Survey No. 25/6 relying on the following submissions:</p> <p>a) Village Panchayat of Assagao letter dt. 29.12.98 submitting plan for regularization of existing structure.</p> <p>b) By, Circular in name of Panchayat dated 29.12.98 authorizing maintenance of structure dt. 29.12.98.</p> <p>c) Circular dt. 04.10.78 dt. 04.10.78 that dwelling was constructed prior to 1991 without approval can be considered for regularization subject to condition that it is purely residential dwelling unit.</p>	22.10.90
5.	<p>Village Panchayat of Assagao certificate that existing structure in survey 25/6 belongs to mother of Appellant No. 3.</p>	04.06.97

The written submissions dated 29.01.2018 gave an explanation to the reason for their absence on 14.11.2017 & 29.11.2017 and also prayed for grant of one opportunity of personal hearing, which the Respondent

No. 1 failed to consider and deal with, while passing demolition order dated 28.03.2018.

19.6 Because both the impugned orders dated 20.09.2018 and 28.03.2018 are passed by the GCZMA in exercise of the powers conferred under Section 5 of the Environment (Protection) Act, 1986 read with Rule 4(3)(a) of the Environment (Protection) Rules, 1986 ['said Rules']. It is pertinent to mention that Rule 4(3)(a) of the said Rules provides for an opportunity to be given to the affected party to file objections against the proposed direction. The said Rule 4(3)(a) states,

"4. Directions.

(1)...

(3)(a) The person, officer or authority to whom any direction is sought to be issued shall be served with a copy of the proposed direction and shall be given an opportunity of not less than fifteen days from the date of service of a notice to file with an officer designated in this behalf the objections, if any, to the issue of the proposed direction.

...

(6) Every notice or direction required to be issued under this rule shall be deemed to be duly served

(a) where the person to be served is a company, if the document is addressed in the name of the company at its registered office or at its principal office or place of business and is either-

(i) sent by registered post, or

(ii) delivered at its registered office or at the principal office or place of business;

(b) where the person to be served is an officer serving Government, if the document is addressed to the person and a copy thereof is endorsed to this Head of the Department and also to the Secretary to the Government, as the case may be, in-charge of the Department in which for the time being the business relating to the Department in which the officer is employed is transacted and is either-

- (i) sent by registered post, or
- (ii) given or tendered to him;

(c) in any other case, if the document is addressed to the person to be served and-

- (i) is given or tendered to him, or
- (ii) if such person cannot be found, is affixed on some conspicuous part of his last known place of residence or business or is given or tendered to some adult member of his family or is affixed on some conspicuous part of the land or building, if any, to which it relates, or
- (iii) is sent by registered post to that person;

Explanation.-For the purpose of this sub-rule,-

- (a) "company" means any body corporate and includes a firm or other association of individuals;
- (b) "a servant" is not a member of the family."

Hence, it is submitted that the impugned orders are in grave violation of the very Rule 4(3)(a) under which it has been issued.

20. The Appellants reserve their right to raise additional grounds with leave of this Hon'ble Tribunal as and when required.

LIMITATION:

21. That there is no delay in filing the present Appeal U/s 16 of the National Green Tribunal Act, 2010 as the same is filed within the statutory period of 30 days from 24.09.2018 i.e. the date of receipt of the impugned letter dated 20.09.2018.

PRAYERS

22. In view of the above facts and circumstances it is most respectfully prayed that this Hon'ble Tribunal may be pleased to:

A. Set aside the Order No. GCZMA/N/08-09/74/1070 dated 20.09.2018 AND Order No. GCZMA/N/08-09/74/1946 dated 28.03.2018 issued by the Goa Coastal Zone Management Authority to the Appellants.

B. To pass any such order as this Hon'ble Tribunal may find fit and proper in the facts and circumstances of the case.

APPELLANTS

THROUGH

Aagney SAIL

ADV. AAGNEY SAIL

ADVOCATE FOR THE APPELLANTS

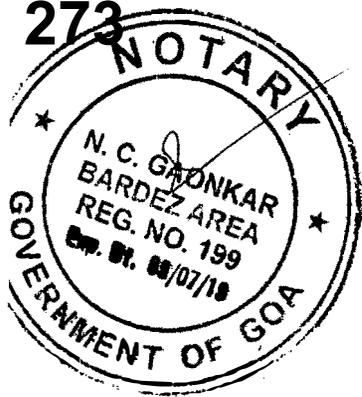
#1393, C-1, VASANT KUNJ,

NEW DELHI - 110070

Ph. +91.9810076618

Email: aagneysail@gmail.com

Filed on: 03.10.2018
New Delhi



**BEFORE THE NATIONAL GREEN TRIBUNAL
AT NEW DELHI**

APPEAL No. ____ of 2018

IN THE MATTER OF:

SAGARDEEP SIRSAIKAR & ORS.

...APPELLANTS

VERSUS

GOA COASTAL ZONE MANAGEMENT
AUTHORITY & OTHERS

...RESPONDENTS

AFFIDAVIT

I, Sagardeep Sirsaikar, S/o Audumber Sirsaikar, aged about 42 years, R/o H. No. 308, Chapora, Dabolwado, Anjuna, Bardez, Goa - 403509, do hereby solemnly state and affirm that:

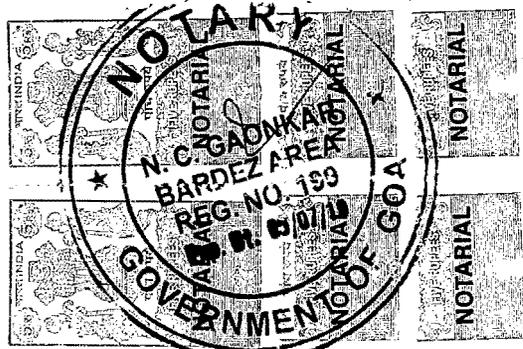
1. That I am the abovementioned Appellant No. 1 and I am aware of the present case and as such am competent to swear this affidavit.
2. That I have understood the accompanying Appeal which has been read over and explained to me. I say that the facts stated therein are true to my knowledge and legal advice which I believe to be true and correct.
3. That the Annexure A1 to A2 of the Appeal are true and correct copy of their respective originals.


DEPONENT

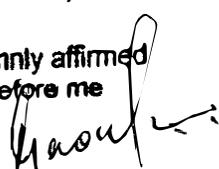
VERIFICATION:

Verified that the contents of paragraph 1 to 3 of my above affidavit which have been read over and explained to me in the vernacular are true to my knowledge & belief, no part of it is false and nothing material has been concealed therefrom.

Verified on 27th of September, 2018 at Goa.



Solemnly affirmed
Before me

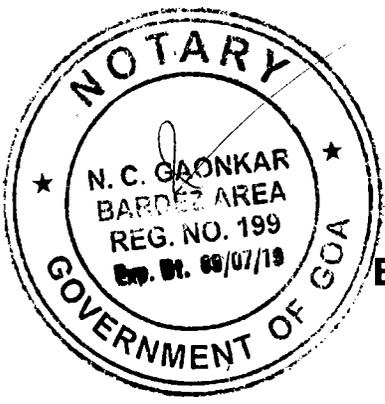


N. C. Gaonkar
Advocate & Notary
Mapusa Bardez - Goa

Reg. No. 10364/2018
Td. PKV C SLPS 3528L


DEPONENT

27 SEP 2018



35

**BEFORE THE NATIONAL GREEN TRIBUNAL
AT NEW DELHI**

APPEAL No. ____ of 2018

IN THE MATTER OF:

SAGARDEEP SIRSAIKAR & ORS. ...APPELLANTS

VERSUS

GOA COASTAL ZONE MANAGEMENT
AUTHORITY & OTHERS

...RESPONDENTS

AFFIDAVIT

I, Jaiprakash Sirsaikar, S/o Audumber Sirsaikar, aged about 39 years, R/o H. No. 308, Chapora, Dabolwado, Anjuna, Bardez, Goa - 403509, do hereby solemnly state and affirm that:

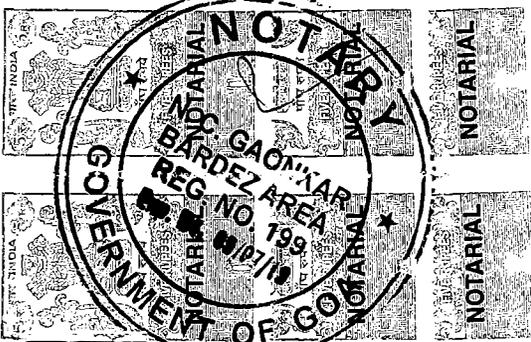
1. That I am the abovementioned Appellant No. 2 and I am aware of the present case and as such am competent to swear this affidavit.
2. That I have understood the accompanying Appeal which has been read over and explained to me. I say that the facts stated therein are true to my knowledge and legal advice which I believe to be true and correct.
3. That the Annexure A1 to A12 of the Appeal are true and correct copy of their respective originals.


DEPONENT

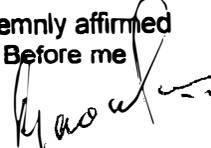
VERIFICATION:

Verified that the contents of paragraph 1 to 3 of my above affidavit which have been read over and explained to me in the vernacular are true to my knowledge & belief, no part of it is false and nothing material has been concealed therefrom.

Verified on 27th of September, 2018 at Goa.



Solemnly affirmed
Before me


N. C. Gaonkar
Advocate & Notary
Mapusa Bardez - Goa


DEPONENT

Reg. No. - 10867/2018

27 SEP 2018



**BEFORE THE NATIONAL GREEN TRIBUNAL
AT NEW DELHI**

APPEAL No. ____ of 2018

IN THE MATTER OF:

SAGARDEEP SIRSAIKAR & ORS.

...APPELLANTS

VERSUS

GOA COASTAL ZONE MANAGEMENT
AUTHORITY & OTHERS

...RESPONDENTS

AFFIDAVIT

I, Audumber Sirsaikar, S/o Late Gunaji Sirsaikar, aged about 72 years, R/o H. No. 308, Chapora, Dabolwado, Anjuna, Bardez, Goa - 403509, do hereby solemnly state and affirm that:

1. That I am the abovementioned Appellant No. 3 and I am aware of the present case and as such am competent to swear this affidavit.
2. That I have understood the accompanying Appeal which has been read over and explained to me. I say that the facts stated therein are true to my knowledge and legal advice which I believe to be true and correct.
3. That the Annexure A1 to A12 of the Appeal are true and correct copy of their respective originals.

DEPONENT

VERIFICATION:

Verified that the contents of paragraph 1 to 3 of my above affidavit which have been read over and explained to me in the vernacular are true to my knowledge & belief, no part of it is false and nothing material has been concealed therefrom.

Verified on 27th of September, 2018 at Goa.

Id. Adher card
no. 6525 5532 8712

DEPONENT

Saguney Sain

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ANNEXURE - R2/12(colly)

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHIAppeal No. 231/2018
(M.A. No. 1416/2018)IN THE MATTER OF:Sagardeep Sirsaikar & Ors.
Vs.
Goa Coastal Zone Management Authority & Ors.CORAM : HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE DR. JUSTICE JAWAD RAHIM, JUDICIAL MEMBER
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

Present: Applicant: Mr. Aagney Sail, Adv.

Date and Remarks	Orders of the Tribunal
<p>Item No. 01</p> <p>October 4, 2018 dv</p>	<p>1. It is stated that the present appeal is identical to the matter dealt with by this Tribunal vide order dated 01.10.2018 in <i>Appeal No. 195/2018</i> in the matter of <i>Sagardeep Sirsaikar & Ors. Vs. Goa Coastal Zone Management Authority & Ors.</i></p> <p>2. In view of above, we direct that the present appeal will also be covered by the said order to the extent applicable and the appellant may appear before the Goa Coastal Zone Management Authority (GCZMA) for the purpose on 09.10.2018 at 11:00 a.m.</p> <p>3. The GCZMA may send a report to this Tribunal by e-mail at filing.ngt@gmail.com on or before 16.10.2018.</p> <p>4. Put up the matter on 23rd October, 2018 alongwith Appeal No. 195/2018.</p> <p>5. There will be also an interim order of <i>status quo</i> till the next date in same terms.</p> <p style="text-align: right;">....., CP (Adarsh Kumar Goel)</p>

<p>Item No. 01</p> <p>October 4, 2018 dv</p>	<p>....., JM (Dr. Jawad Rahim)</p> <p>.....,JM (S.P. Wangdi)</p> <p>.....,EM (Dr. Nagin Nanda)</p> <p style="text-align: right;">04.10.2018</p>
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Jagney Sain

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**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**Appeal No. 195/2018
(M.A. No. 1404/2018)**

And

**Appeal No. 231/2018
(M.A. No. 1416/2018)**

IN THE MATTER OF:

Sagardeep Sirsaikar & Ors.

Vs.

Goa Coastal Zone Management Authority & Ors.

And

Sagardeep Sirsaikar & Ors.

Vs.

Goa Coastal Zone Management Authority & Ors.

**CORAM : HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE DR. JUSTICE JAWAD RAHIM, JUDICIAL MEMBER
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Present: Appellant: Mr. Aagney Sail, Adv.

Date and Remarks	Orders of the Tribunal
<p>Item Nos. 09-10</p> <p>October 23, 2018</p> <p>A</p>	<p>In furtherance to order of this Tribunal dated 01.08.2018, the Goa Coastal Zone Management Authority (GCZMA) has heard the appellants, considered the documents and recorded the proceedings in its minutes of 186th meeting held on 12.10.2018.</p> <p>In view of the above development, since the GCZMA has initiated fresh consideration, the appeals have become infructuous unless the appellants are aggrieved by the order which may be now passed. The original impugned orders no longer survive. The appeals will stand disposed of so that the GCZMA may take further action in terms of the minutes of the above meeting.</p> <p align="right">....., CP (Adarsh Kumar Goel)</p>

	<p>Item Nos. 09-10</p> <p>October 23, 2018</p> <p>A</p>	<p>....., JM (Dr. Jawad Rahim)</p> <p>.....,JM (S.P. Wangdi)</p> <p>.....,EM (Dr. Nagin Nanda)</p> <p style="text-align: right;">23.10.2018</p>
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Jagney Sain

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**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**Appeal No. 195/2018
(M.A. No. 1404/2018)**

IN THE MATTER OF:

**Sagardeep Sirsaikar & Ors.
Vs.**

Goa Coastal Zone Management Authority & Ors.

**CORAM : HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Present: Appellant: Mr. Aagney Sail, Adv.

	Date and Remarks	Orders of the Tribunal
	<p>Item No. 01</p> <p>October 01, 2018</p> <p>R</p>	<ol style="list-style-type: none"> 1. A compliant was received by the Goa Coastal Zone Management Authority (GCZMA) that the appellant had raised illegal structure "Welcome Rest" for commercial purpose for running bar and restaurant, in violation of CRZ Notification, 2011. The construction was within the prohibited distance from the High Tide Line (HTL) from the sea and also within the prohibited distance from the river and no prior approval was taken from the authority. 2. Vide notice dated 13.10.2015, the appellants were required to show cause as to why the structure be not demolished. 3. The matter was brought to the National Green Tribunal, Western Zone Bench, Pune and was withdrawn with permission to move the concerned authority. 4. On 14.11.2017, the matter was considered by the GCZMA in its 163rd meeting. Since the appellants failed to appear, the matter was adjourned to 29.11.2017. On that date, direction to demolish the structure was issued. 5. The appellants, thereafter, moved the Tribunal again. The Tribunal directed that, if the appellants had not received any notice as alleged, the same may be

<p>Item No. 01</p> <p>October 01, 2018</p> <p>R</p>	<p>verified and the appellants be given further opportunity.</p> <p>6. By the impugned order, it has been found that in spite of opportunity, the appellants themselves had failed to appear. Accordingly, no further opportunity was required to be given. Order of demolition dated 28.03.2018 was reiterated.</p> <p>7. Learned counsel for the appellants submits that appellants had produced documents which included Registration Certificate of the restaurant on a date prior to coming into force of the Notification and there has been no change in the structure thereafter. Thus, the impugned Notification was not applicable. In the impugned order, the documents furnished by the appellants have not been dealt with.</p> <p>8. With a view to examine the matter further, we direct the GCZMA to hear the appellants and consider the documents relied upon and send a report in the matter to this Tribunal before the next date. The appellants may appear before the authority for the purpose on 09.10.2018 at 11:00 am.</p> <p>9. The report may be submitted to this Tribunal by e-mail at filing.ngt@gmail.com on or before 16.10.2018.</p> <p>10. In the meantime, the status-quo may be maintained with regard to the demolition till the next date.</p> <p>11. Put up the matter for further consideration on 23.10.2018.</p> <p>....., CP (Adarsh Kumar Goel)</p> <p>.....,EM (Dr. Nagin Nanda)</p> <p style="text-align: right;">01.10.2018</p>
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Jagney Sain

193



Aagney Sail <aagneysail@gmail.com>

Appeal No. 05/2019 (WZ) (disposed off) - Reply of Respondent Nos. 2 to 4 to APPEAL - NEXT DATE 28.08.2023

Aagney Sail <aagneysail@gmail.com> Thu, Aug 24, 2023 at 2:29 PM
To: sborkar@gmail.com, advsbborkar@gmail.com, swarajghate@gmail.com, goacoastalzone@gmail.com, vibhavramonkar@yahoo.co.in
Cc: Supriya Dangare <advocatedangare@yahoo.co.in>, Supriya Dangare <dangaresupriya@gmail.com>

To,

1. Adv. Shweta B Borkar

Counsel for Appellants

Email: adv. sborkar@gmail.com, advsbborkar@gmail.com & swarajghate@gmail.com

2. Goa Coastal Zone Management Authority (GCZMA)

Respondent No. 1

Email: goacoastalzone@gmail.com, dangaresupriya@gmail.com

Hi,

Please find attached the Reply to Appeal by Respondent Nos 2 to 4.

Best

Adv. Aagney Sail,

Counsel for Respondent Nos. 2 to 4.

Mobile: +91.9810076618

**REPLY TO APPEAL - FINAL.pdf**

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