

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

APPEAL No. 08 of 2023

**IN THE MATTER OF:**

THOMAS FERNANDES & ANR. ...APPELLANTS

VERSUS

GOA COASTAL ZONE MANAGEMENT  
AUTHORITY & OTHERS

...RESPONDENTS

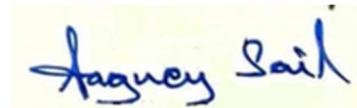
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NEXT DATE: 20.02.2024

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RESPONDENT NO. 3

THROUGH



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Place: Goa

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

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**IN THE MATTER OF:**

THOMAS FERNANDES & ANR.	...APPELLANTS
VERSUS	
GOA COASTAL ZONE MANAGEMENT AUTHORITY & OTHERS	...RESPONDENTS

**REPLY OF RESPONDENT NO. 3 TO  
APPEAL**

**MOST RESPECTFULLY SHOWETH:**

1. That the present Appeal is pending adjudication before this Hon'ble Tribunal. The present Reply is being filed jointly by Respondents No. 3 ('answering respondent' for short) to oppose the reliefs sought by the Appellants 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.

**PARA-WISE REPLY:**

2. REPLY TO PARA 1 OF THE APPEAL: That the contents of this paragraph need no response and the grounds for challenge are responded to in detail in replies to the paragraphs of Grounds.

3. REPLY TO PARA 2 OF THE APPEAL: The contents of this paragraph is denied completely as being baseless in light of the GCZMA proceedings including site-inspection carried out and its report which found blatant illegalities in the construction carried out by the Appellants thereby establishing the complaint preferred by the answering Respondent to be justified and true.

4. REPLY TO PARAs 3 & 4 OF THE APPEAL: The contents of these paragraphs are denied as being false and without any basis. The contention that Appellants received the two notices for site inspection after the dates scheduled for inspection is not supported by any averment as to how these notices were received i.e. either by speed post or registered post etc. and also not supported by annexing the postal envelopes along with postal tracking receipts to show date of delivery. Only a hand written note is there which states 'Received on ...' giving date and time, which also does not give the name /signature of the person who received these notices and from whom, if received by hand / in person. Lastly, it is pointed out that a prudent person would have made a representation to the GCZMA about delayed receipt of the first notice dated 27.04.2017 on 08.05.2017 which was five (5) days after the scheduled site

inspection and requested that in future such notices be communicated in time and via email or a faster medium. Similarly, another representation should have been made to GCZMA by the Appellants for the second notice dated 29.05.2017. The Appellants by not making any representation or lodging complaint with GCZMA are estopped from raising now the issue of violation of principles of natural justice and adverse inference deserves to be drawn against Appellants. Hence, the contention that site inspection was conducted in violation of the principles of natural justice i.e. without due notice to the Appellants deserves to be dismissed for want of specific pleadings and evidence. Also, the contention that no credence can be given to the site inspection report nor any reliance can be placed on it by GCZMA is wrong and completely misplaced as after the site inspection a show cause notice dated 10.11.2017 was issued to Appellants giving them an opportunity to file their reply and produce relevant documents to explain their case.

5. REPLY TO PARAs 5 & 6 OF THE APPEAL: The contents of these paragraphs need no response and the factual matrix as stated therein is denied for want of proof and relevant record not filed by the Appellants.

6. REPLY TO PARA 7 OF THE APPEAL: The contents of this paragraph are denied and deserve to be rejected as it is not possible for Appellants, who are the owners running a guest house and restaurant at the concerned site, to not know that site inspection was being carried out on 02.06.2017 afternoon from their staff / officials present at site. Moreover, instead of submitting a detailed reply to the Site inspection report bringing on record their objections and filing relevant record the Appellants sought a fresh site inspection without disclosing any grounds / reasons justifying the same.

7. REPLY TO PARA 8 OF THE APPEAL: The contents of this paragraph being factual need no response for the answering respondent.

8. REPLY TO PARAs 9 & 10 OF THE APPEAL: The contents of these paragraphs are denied completely being false and for want of specific pleadings and documents regarding receipt of notice for personal hearing on 31.08.2018 at 04pm. Moreover, a prudent person would have immediately i.e. on the next day i.e. 01.09.2018 (Saturday) would have made a complaint / representation regarding late receipt of

the notice along with necessary documents like postal receipts, postal tracking report generated online for speed/registered post. However, the Appellants did not bring these documents on record and only wrote to the GCZMA on 11.09.2018 i.e. after eleven (11) days of receipt of the notice for personal hearing without giving any explanation for such delay.

9. REPLY TO PARA 11 OF THE APPEAL: The contents of this paragraph need no response from the answering respondent.
  
10. REPLY TO PARAS 12 & 13 OF THE APPEAL: The contents of these paragraphs are denied as being false and without any supporting documents. It is submitted that the Appellants have submitted in their reply to GCZMA show cause notice only a one page document i.e. a letter dated 04.12.2010 written by Secretary of Village Panchayat Anjuna-Caisua to show that the structures were existing prior to 1991 and hence are protected. Unfortunately, none of the documents referred to in the Village Panchayat letter dated 04.12.2010 had been brought on record by the Appellants before the GCZMA during the proceedings nor have they chosen to submit the same before this Hon'ble Tribunal in the present

Appeal. These documents are (a) Judgment and Order dated 08.03.2010 passed by Additional Director of Panchayats-II, Panaji-Goa in Appeal Nos. 12/2010 and 300/2009 which is the only reference to the letter dt. 04.12.2010, (b) Village Panchayat Resolutions Nos. 9(k)/2010-2011 dated 17.09.2010 and Resolution No. 9(d)/2010-2011 dated 30.11.2010, (c) PT sheets, (d) Report of Surveyor appointed by Village Panchayat etc. This V.P. Anjuna-Caisua letter dated 04.12.2010 does not disclose which structure was constructed in which survey no. prior to existence of CRZ Notification 1991. It is also pertinent to mention that one of the survey nos. mentioned in this V.P. letter i.e. Sy. No. 129/33 of Anjuna, Bardez-Goa is not at all included in the impugned order. Hence, the only piece (page) of evidence filed before GCZMA by the Appellants fails to establish that all the structures observed during GCZMA site-inspection conducted on 02.06.2017 were existing prior to 1991.

11. REPLY TO PARA 14 OF THE APPEAL: The contents of this paragraph are denied completely as being false and baseless. It is submitted that during the 185<sup>th</sup> meeting of GCZMA held on 04.10.2018 the Appellants were

represented through their counsel Adv. S. Sayed to defend and had sought time to file written submission. Moreover, GCZMA had decided during its 185<sup>th</sup> meeting that,

*185<sup>th</sup> GCZMA meeting dt. 04.10.18*

*"Case 1.2 ...*

*Decision: The Authority heard both the parties and after due deliberation decided to grant 10 days time to the respondent (Appellants herein) to submit additional documents if any, before the Authority with a copy to the complaint (Respondent No. 3 herein). Further Authority decided no more opportunity will be given to the parties and the authority will take final decision based on the records submitted from the respondents."*

That it is submitted that the Appellants already knew on 04.10.2018 during the proceedings of the 185<sup>th</sup> GCZMA meeting that no further opportunity of hearing will be granted to any party and within 10 days they have to submit additional documents. They submitted their reply dated 12.10.2018 within 10 days in compliance to the GCZMA decision. Hence, the contention that no notice of hearing was given to Appellants for the GCZMA meeting held on 18.12.2018 and that the said meeting is in violation of principles of natural justice is completely wrong. Even answering respondent who is the complainant was not given any notice and was not present during the 190<sup>th</sup> GCZMA meeting held on 18.12.2018.

12. REPLY TO PARAs 15 & 16 OF THE APPEAL: The contents of these paragraphs need no response from the answering respondent.

13. REPLY TO PARA 17 OF THE APPEAL: The contention raised in this paragraph that the MoEF&CC order dated 26.10.2016 constituting the GCZMA does not authorize any delegation of duty in favour of any representatives and during the 190<sup>th</sup> GCZMA meeting held on 18.12.2018 only five (5) members chaired the said meeting as three members were not present and had deputed representatives thereby rendering all decisions taken at the said meeting a nullity is completely misplaced and wrong interpretation of the law. In this regard it is submitted that there were six (6) members of GCZMA present in person who were the following:

- (i) Chairman of GCZMA.
- (ii) Member Secretary of GCZMA.
- (iii) Dr. Prabhakar Shirodkar, Expert Member.
- (iv) Shri Suhas Godse, Expert Member.
- (v) Shri Audhoot Bhonsule, Expert Member.
- (vi) Shri Srirang Jambhale, Expert Member.

In addition, the following three members were present through their deputed representatives:

- (i) Representative on behalf of Deputy Conservator of Forests, Dept. of Forests, Govt. of Goa.

- (ii) Representative on behalf of Director, Directorate of Fisheries, Panaji, Goa.
- (iii) Representative on behalf of Director, Directorate of Settlement & Land Records, Panaji, Goa.

That it is submitted that the questing of authorised representative of an ex-officio member of GCZMA has been settled by this Hon'ble Tribunal in its judgment dated 22.07.2020 passed in the case of Martinho Xavier Fernandes vs State of Goa – Appeal No. 33/2019 (WZ) ('Martinho's case' for short) wherein it held that,

*"15. The GCZMA had the required quorum as envisaged in its constitution. The GCZMA consists of Expert Members or nominated member and ex-officio members who are head of concerned Government Department. The concerned Head of Department, who is ex-officio member of authority, can duly authorize his representative to remain present for GCZMA meeting and in that event also the Committee of GCZMA is properly constituted and can validly take decisions in the matters placed before it. It is stated that the presence of the representatives of the ex-officio members of Authority who are duly authorized by Head of Department doesn't vitiate the proceedings before the Authority as they participate in the deliberations and they have sound knowledge of the provisions contained in CRZ Notification who can also take decisions on behalf of the Department. However, the expert members are nominated members by their name and hence cannot be represented by any other person.*

...

The issue of quorum of GCZMA raised before this Hon'ble Tribunal in Martinho's case was,

*"5... The GCZMA did not have the necessary quorum in terms of the notification dated 26.10.2016. The constitution of the GCZMA which heard the Appellant at its 185th Minutes was not in accordance with S.O 3324(E), which ought to have included as its members (1) the Director, Directorate of Panchayats, (2) the Director, Directorate of Environment, (3) Dr. Nandkumar Sawant, Principal, Parvatibai Chowgule College of Arts & Science, Margao, Goa, (4) Prof. Suhas Godse, Dhempe College of Arts & Science, Miramar, Goa, and (5) Mr. Shirang V. Jarnbhale, Secretary, Gram Vikas Kendra (NGO), Savoi Verem, Goa. Even out of the 8 members present, curiously 4 of the said 8 were "representatives" of the ex-officio member which is not tenable in law in the absence of a power of sub-delegation in the parent notification. Thus only 4 out of the 13 ex-officio members were present at the meeting dated 04.10.2018 which led to the impugned order being passed. In the absence of a valid quorum, the said meeting cannot, therefore, be considered as a valid meeting, since the standing order specified the manner in which the authority is to be constituted and since the Authority is merely a delegate of the MoEF&CC, it is bound by the said order and any action in contravention to the said order is liable to be quashed and struck down. The GCZMA is merely a delegate of the MoEF&CC and cannot travel beyond the S.O in scope or form. Since the GCZMA which heard the Appellant at its 185th meeting on 04.12.2018 was not properly constituted, it is a defect which goes to the roots of the Authorities jurisdiction and consequently, the impugned order of demolition deserves to be quashed and set-aside.*

That it is pertinent to mention that the judgment of this Hon'ble Tribunal passed in Martinho's case especially the finding recorded in its para 15 (quoted above) pertaining to quorum of GCZMA and authorized representatives has not been quashed by the Hon'ble Supreme Court of India while passing final order dated 19.10.2023 in Civil Appeal No. 2917/2020 which remanded the matter back to GCZMA for deciding. A true and correct copy of the Supreme Court order dated 19.10.2023 is hereto marked and annexed as **ANNEXURE – R3/4**. Hence, it is submitted that in light of the above, the contention that the 190<sup>th</sup> meeting of GCZMA held on 18.12.2018 did not have the necessary quorum deserves to be dismissed.

14. REPLY TO PARAs 18 to 21 OF THE APPEAL: The contents of these paragraphs pertain to the issue of delay and the same being decided by this Hon'ble Tribunal vide its order dated 21.07.2023 need no response from the answering respondent.
15. REPLY TO GROUND (A) PARA 22 OF THE APPEAL: The present ground deserves no reply as the same is vague and lacks specific pleadings.

16. REPLY TO GROUND (B) PARA 22 OF THE APPEAL: The present ground deserves no reply as the same is vague and lacks specific pleadings.
17. REPLY TO GROUND (C) PARA 22 OF THE APPEAL: The contention of violation of principles of natural justice by GCZMA in taking the impugned decision on 18.12.2018 without giving any opportunity of hearing to the Appellants is completely false and baseless. It is submitted that during the 185<sup>th</sup> meeting of GCZMA held on 04.10.2018 the Appellants were represented through their counsel Adv. S. Sayed to defend and had sought time to file written submission. Moreover, GCZMA had decided during its 185<sup>th</sup> meeting that,

*185<sup>th</sup> GCZMA meeting dt. 04.10.18*

*"Case 1.2 ...*

*Decision: The Authority heard both the parties and after due deliberation decided to grant 10 days time to the respondent (Appellants herein) to submit additional documents if any, before the Authority with a copy to the complaint (Respondent No. 3 herein). Further Authority decided no more opportunity will be given to the parties and the authority will take final decision based on the records submitted from the respondents."*

That it is submitted that the Appellants already knew on 04.10.2018 during the proceedings of the 185<sup>th</sup> GCZMA meeting that no further opportunity of hearing will be

granted to any party and within 10 days they have to submit additional documents. They submitted their reply dated 12.10.2018 within 10 days in compliance to the GCZMA decision. Hence, the contention that no notice of hearing was given to Appellants for the GCZMA meeting held on 18.12.2018 and that the said meeting is in violation of principles of natural justice is completely wrong. Even answering respondent who is the complainant was not given any notice and was not present during the 190<sup>th</sup> GCZMA meeting held on 18.12.2018.

18. REPLY TO GROUND (D) PARA 22 OF THE APPEAL: In response to this Ground it is submitted that the Appellants have submitted in their reply dated 12.10.2018 (to GCZMA show cause notice) only a one page document as evidence i.e. a letter dated 04.12.2010 written by Secretary of Village Panchayat Anjuna-Caisua to show that the structures at concerned sites were existing prior to 1991 and hence are protected. Unfortunately, none of the documents referred to in the Village Panchayat letter dated 04.12.2010 (at Page no. 109-110 of Appeal) had been brought on record by the Appellants before the GCZMA during the proceedings nor have they chosen to submit the

same before this Hon'ble Tribunal in the present Appeal.

These documents are the following:

- (a) Judgment and Order dated 08.03.2010 passed by Additional Director of Panchayats-II, Panaji-Goa in Appeal Nos. 12/2010 and 300/2009 which is the only reference to the letter dt. 04.12.2010,
- (b) Village Panchayat Resolutions Nos. 9(k)/2010-2011 dated 17.09.2010 and Resolution No. 9(d)/2010-2011 dated 30.11.2010,
- (c) PT sheets,
- (d) Report of Surveyor appointed by Village Panchayat etc.

This V.P. Anjuna-Caisua letter dated 04.12.2010 does not disclose which structure was constructed in which survey no. prior to existence of CRZ Notification 1991. It is also pertinent to mention that one of the survey nos. mentioned in this V.P. letter i.e. Sy. No. 129/33 of Anjuna, Bardez-Goa is not at all included in the impugned order. Interestingly this V.P. letter states that type of construction is temporary structure which the GCZMA site inspection conducted in 2017 finds to be converted to permanent concrete structure. Hence, the only piece (page) of evidence filed before GCZMA by the Appellants fails to establish that all the structures observed during GCZMA site-inspection conducted on 02.06.2017 were existing prior to 1991.

19. REPLY TO GROUND (E) PARA 22 OF THE APPEAL: IN response it is submitted that there is no document to establish that the said structures at the concerned site were existing prior to 1991 and hence, the claim that these structures were declared to be in existence prior to 1991 is completely wrong. It is submitted that GCZMA in the impugned decision has held that,

- (a) the violator (Appellants herein) have evaded to file detailed reply to show cause notice justifying existence of structure prior to 1991.
- (b) Site Inspection report of Expert Member suggests Sun Shine Guest House at present is ground plus one floor structure having 9 rooms where on a ground floor structure was existing.
- (c) Site Inspection Report has also observed that Sun Shine Food Point is a completely new Structure.

In addition, the contention that the Site Inspection Report did not record any finding on new construction is completely wrong as the Site Inspection Report records that,

"...WHEREAS, an inspection of the site under reference was conducted through the Expert Members of GCZMA on 02/07/2017 which in brief states as follows:

...

iv) The Sy. plan brought by the DSLR representative indicated only an existing old ground floor structure where Sun Shine Guest House (G+1 Structure) has been constructed.

...

viii) The Sy. Plan shown by the DSLR representative indicated no earlier existing structure in the area where Sun Shine Food Point is constructed.  
..."

20. REPLY TO GROUND (F) PARA 22 OF THE APPEAL: In response it is submitted that the reason for no notice for site inspection being given to Appellants is explained in paragraph no. 5 of the present Reply which are not being repeated and may kindly be read in response herein. In addition, it is also pertinent to mention that the impugned order does not solely rely on the site inspection report but also records the fact that despite opportunity the respondent violator has evaded to file detailed reply and has preferred to file preliminary objections which are only dilatory tactics. The impugned order also notes that there are no documents on record to substantiate existence of structure as existing prior to 1991. Hence, the contention that demolition is ordered only on the basis of site inspection is completely wrong.
21. REPLY TO GROUND (G) PARA 22 OF THE APPEAL: The present ground deserves no reply as the same is vague and lacks specific pleadings.

22. REPLY TO GROUND (H) PARA 22 OF THE APPEAL: In response it is submitted that Appellants failed to establish before GCZMA (at even in present Appeal before this Hon'ble Tribunal) a case highlighting the discrepancies / faults in the site-inspection carried out on 02.06.2017 and its report which was fit for conducting a fresh site inspection by GCZMA.
23. REPLY TO GROUND (I) PARA 22 OF THE APPEAL: In response it is submitted that the issue of double jeopardy before this Hon'ble Tribunal under Section 14 & 15 of the National Green Tribunal Act, 2010 in the proceedings in O.A. No. 195/2017 (WZ) and before the GCZMA does not arise. It has been rightly held by GCZMA in the impugned decision that there is no bar in law for GCZMA to entertain a pending complaint for which an application is also filed before this Hon'ble Tribunal.
24. REPLY TO GROUND (J) PARA 22 OF THE APPEAL: In response it is submitted that nothing prevented the Appellants from bringing the record of the said High Court case and compliance report of the Village Panchayat Anjuna which allegedly establish that the structures of the Appellants on the concerned sites are prior to 1991. On the

contrary, every possible opportunity was provided to the Appellants by the GCZMA during its proceedings to bring on record these so-called relevant documents for adjudication of their case. By not producing these so-called important documents before the GCZMA when opportunity was granted to them, the Appellants now cannot gain advantage of their own wrong by putting the cart before the horse that the GCZMA ought to have verified its records. In this regard it is submitted that it is settled law (A.P. Pollution Control Board v. M.V. Nayudu (1999) SCC 718 – paras 31 to 38) that in environmental cases applying precautionary principle, the burden of proof is reversed and lies on those who want to change the status quo or on the polluter which herein are the Appellants who want to build concrete structures in the no development zone of the CRZ Notification, 2011.

25. REPLY TO GROUND (K) PARA 22 OF THE APPEAL: IN response it is submitted that the reversal of burden of proof in environmental cases as mentioned in the paragraph above also states that the party attempting to preserve the status quo by maintaining a less polluted state (the complainant before GCZMA who is the answering respondent) should not carry the burden of proof and the

party who wants to alter it or is proposing the activity that is potentially harmful to the environment (the Appellants) must bear this burden. Refer – Krishan Kant Singh v. M/s Triveni Engg. Industries Ltd. – O.A. No. 317/2014(PB) decided on 10.12.2015 at Para 20 which states that,

*"20. As we have already noticed, that the statutory provisions/environmental laws in India place an unequivocal obligation upon the person or industry not to carry out any activity which is hazardous or otherwise polluting, except with the consent of the Board. Therefore, the onus to show that the activity is being carried on with the consent of the Board or the competent authority and that such activity is being continued strictly in terms of the consent order within the prescribed parameters of emissions or discharge, is upon the industry/unit. ..."*

Reliance is also placed on the Bombay High Court at Goa judgment dated 24.08.2018 passed in PILWP 26/2017 wherein it has been held that,

*"88. The burden is on those who seek to construct in the coastal zone to show that their actions are environmentally benign. If the data is not forthcoming, the sequitur is that the project proponent has failed to discharge the burden. ..."*

26. REPLY TO GROUNDS (L) & (M) PARA 22 OF THE APPEAL: In response to this ground the following points are submitted

to establish that violation of principles of natural justice were not violated:

- (i) Two notices of site inspection were issued (Pg. 63-66 of Appeal):  
Appellants failed to contact GCZMA and submit written representation that first notice was received after the scheduled inspection. If they had done so then the second notice would have been delivered on time. Moreover, there are no pleadings by Appellants and documents annexed to establish that these two notices were received late.
- (ii) Show Cause notice was issued by GCZMA:  
The Appellants despite receipt of show cause notice on time failed to submit their reply on time. They sought extension of time twice and did not submit their reply for more than a year.
- (iii) Appellants did not appear in GCZMA hearing on 28.08.2018 despite notice of the same being issued. GCZMA adjourned the hearing to give opportunity to Appellants to be present. Appellants claim to have received notice to this meeting on 30.08.18, however, no postal envelop is attached to substantiate the same and a letter dated 11.09.18 is written to GCZMA instead of on the very next date i.e. 31.08.18.
- (iv) Notice dt. 04.09.18 of Personal hearing before GCZMA:  
The Appellants got this notice on time and appeared before GCZMA on 04.10.2018. They were represented by an advocate in this meeting who was granted ten days to submit additional documents.
- (v) Reply dated 12.10.2018 is submitted by Appellants to GCZMA in response to the Show Cuase Notice.
- (vi) No party was invited for the 190<sup>th</sup> GCZMA meeting held on 18.12.2018 as it was already decided by GCZMA in its 185<sup>th</sup> meeting held on

04.10.2018 wherein Appellants and answering respondent were present, that no more opportunity will be given to the parties and decision will be taken based on the records submitted by Appellants.

Hence, in light of the above it is submitted that there has no violation of the principles of natural justice in the present case by the GCZMA. The stigmatic remarks are observations of GCZMA highlighting the fact about the Appellants which, considering their conduct, have been rightly made.

27. REPLY TO GROUNDS (N), (O) & (P) PARA 22 OF THE APPEAL: In response it is submitted that during the 190<sup>th</sup> GCZMA meeting there were six (6) members (and not 5 members as contented by Appellants) of GCZMA present in person who were the following:

- (i) Chairman of GCZMA.
- (ii) Member Secretary of GCZMA.
- (iii) Dr. Prabhakar Shirodkar, Expert Member.
- (iv) Shri Suhas Godse, Expert Member.
- (v) Shri Audhoot Bhonsule, Expert Member.
- (vi) Shri Srirang Jambhale, Expert Member.

In addition, the following three members were present through their deputed representatives:

- (i) Representative on behalf of Deputy Conservator of Forests, Dept. of Forests, Govt. of Goa.

- (ii) Representative on behalf of Director, Directorate of Fisheries, Panaji, Goa.
- (iii) Representative on behalf of Director, Directorate of Settlement & Land Records, Panaji, Goa.

That it is submitted that the questing of authorised representative of an ex-officio member of GCZMA has been settled by this Hon'ble Tribunal in its judgment dated 22.07.2020 passed in the case of Martinho Xavier Fernandes vs State of Goa – Appeal No. 33/2019 (WZ) ('Martinho's case' for short) wherein it held that,

*“15. The GCZMA had the required quorum as envisaged in its constitution. The GCZMA consists of Expert Members or nominated member and ex-officio members who are head of concerned Government Department. The concerned Head of Department, who is ex-officio member of authority, can duly authorize his representative to remain present for GCZMA meeting and in that event also the Committee of GCZMA is properly constituted and can validly take decisions in the matters placed before it. It is stated that the presence of the representatives of the ex-officio members of Authority who are duly authorized by Head of Department doesn't vitiate the proceedings before the Authority as they participate in the deliberations and they have sound knowledge of the provisions contained in CRZ Notification who can also take decisions on behalf of the Department. However, the expert members are nominated members by their name and hence cannot be represented by any other person. ...”*

The issue of quorum of GCZMA raised before this Hon'ble Tribunal in Martinho's case was,

“5... The GCZMA did not have the necessary quorum in terms of the notification dated 26.10.2016. The constitution of the GCZMA which heard the Appellant at its 185th Minutes was not in accordance with S.O 3324(E), which ought to have included as its members (1) the Director, Directorate of Panchayats, (2) the Director, Directorate of Environment, (3) Dr. Nandkumar Sawant, Principal, Parvatibai Chowgule College of Arts & Science, Margao, Goa, (4) Prof. Suhas Godse, Dhempe College of Arts & Science, Miramar, Goa, and (5) Mr. Shirang V. Jarnbhale, Secretary, Gram Vikas Kendra (NGO), Savoi Verem, Goa. Even out of the 8 members present, curiously 4 of the said 8 were "representatives" of the ex-officio member which is not tenable in law in the absence of a power of sub-delegation in the parent notification. Thus only 4 out of the 13 ex-officio members were present at the meeting dated 04.10.2018 which led to the impugned order being passed. In the absence of a valid quorum, the said meeting cannot, therefore, be considered as a valid meeting, since the standing order specified the manner in which the authority is to be constituted and since the Authority is merely a delegate of the MoEF&CC, it is bound by the said order and any action in contravention to the said order is liable to be quashed and struck down. The GCZMA is merely a delegate of the MoEF&CC and cannot travel beyond the S.O in scope or form. Since the GCZMA which heard the Appellant at its 185th meeting on 04.12.2018 was not properly constituted, it is a defect which goes to the roots of the Authorities jurisdiction

*and consequently, the impugned order of demolition deserves to be quashed and set-aside.*

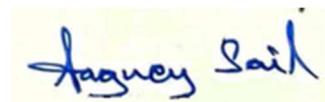
That it is pertinent to mention that the judgment of this Hon'ble Tribunal passed in Martinho's case especially the finding recorded in its para 15 (quoted above) pertaining to quorum of GCZMA and authorized representatives has not been quashed by the Hon'ble Supreme Court of India while passing final order dated 19.10.2023 in Civil Appeal No. 2917/2020 which remanded the matter back to GCZMA for deciding. A true and correct copy of the Supreme Court order dated 19.10.2023 is ANNEXURE – R3/4. Hence, it is submitted that in light of the above, the contention that the 190<sup>th</sup> meeting of GCZMA held on 18.12.2018 did not have the necessary quorum thereby rendering the decision a nullity deserves to be dismissed.

28. REPLY TO GROUND (Q) PARA 22 OF THE APPEAL: The contents of this Ground need no response.
29. REPLY TO PARA 23 OF THE APPEAL: The contents of this paragraph pertain to the issue of delay and the same being decided by this Hon'ble Tribunal vide its order dated 21.07.2023 need no response from the answering respondent.

30. REPLY TO PARAs 24 to 28 OF THE APPEAL: The contents of these paragraphs need no response from the answering respondent.
31. REPLY TO PARA 29 OF THE APPEAL: That in light of the submissions made in the present reply the Prayers sought in this paragraph deserve to be rejected and the impugned order dated 02.01.2019 passed by GCZMA upheld by this Hon'ble Tribunal. It is most humbly prayed that this Hon'ble Tribunal may be please to,
- (i) Direct GCZMA to impose environmental compensation on Appellants for violation as per the method/formula derived through their study titled 'Environmental Compensation for Coastal Damage through Total Ecosystem Service Values'.
  - (ii) Grant cost of litigation to the answering Respondent No. 3 to be imposed on Appellants.

RESPONDENT NO. 3

THROUGH



AAGNEY SAIL

**ADVOCATE FOR THE RESPONDENT NO. 3**

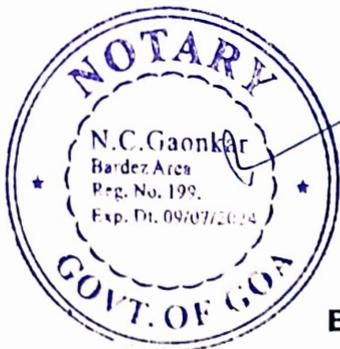
C36, Rama World, Tifra(N.P.), Airport Road,  
Bilaspur, Chhattisgarh – 495223.

Ph. +91.9810076618.

Email: aagneysail@gmail.com

Filed on: 19.02.2024

Place: Goa



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

APPEAL No. 08 of 2023

**IN THE MATTER OF:**

THOMAS FERNANDES & ANR. ...APPELLANTS

VERSUS

GOA COASTAL ZONE MANAGEMENT  
AUTHORITY & OTHERS ...RESPONDENTS

**AFFIDAVIT**

I, Mr. Jaiprakash Sirsaikar, S/o Audumber Sirsaikar, aged about 42 years, R/o H. No. 308, Welcome House, Chapora, Bardez, Goa – 403509 do hereby solemnly state and affirm that:

1. That I am the abovementioned Respondent 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 Reply to the 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 Annexure R3/4 to R3/ 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 19<sup>th</sup> of February, 2024 at Mapusa, Goa.

**DEPONENT**

17th card  
814716016136.

Solemnly affirmed  
Before me

N. C. Gaonkar  
Advocate & Notary  
Mapusa Bardez - Goa

26. NO. 5080/24

19 FEB 2024





complainant submit that even the ground plus first floor cannot be regularized, inasmuch as the same is without permission.

5. We do not wish to go into that aspect of the matter.

6. The GCZMA is a competent authority to consider the question as to whether the ground plus first floor of the appellant can be regularized or not.

7. Therefore, we are inclined to remand the matter since the appellant on his own has demolished the construction of the second floor.

8. In that view of the matter, the matter is remitted back to the GCZMA for considering the limited aspect as to whether the construction of the ground plus first floor of the appellant could be regularized or not.

9. Needless to state that the order of demolition shall stand in abeyance till the GCZMA decides the issue, as aforesaid.

10. Further, needless to state that in the event, the GCZMA comes to a finding that the construction of the ground plus first floor is entitled to be

regularized, the order of demolition shall cease to exist.

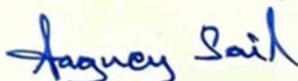
11. The appeal is disposed of in the above terms.

12. Pending application(s), if any, stand disposed of.

.....J  
(B.R. GAVAI)

.....J  
(PRASHANT KUMAR MISHRA)

New Delhi  
October 19, 2023



-- True copy --

ITEM NO.37

COURT NO.4

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 2917/2020

MARTINHO XAVIER FERNANDES

Appellant(s)

VERSUS

THE STATE OF GOA &amp; ORS.

Respondent(s)

(IA No.73529/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.73528/2020-STAY APPLICATION, IA No. 75319/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 19-10-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI

HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA

For Appellant(s)

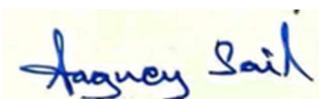
Mr. Ninad Laud, Adv.  
Mr. Ivo D Costa, Adv.  
Ms. Rashika Narain, Adv.  
Ms. Anshula Vijay Kumar Grover, AOR

For Respondent(s)

Ms. Mukti Chowdhary, AOR  
  
Mr. Abhay Anil Anturkar, Adv.  
Mr. Dhruv Tank, Adv.  
Mr. Aniruddha Awalgaonkar, Adv.  
Ms. Surbhi Kapoor, AOR  
  
Mr. Salvador Santosh Rebello, AOR  
Mr. Raghav Sharma, Adv.  
Mr. Ankit Kumar, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

(DEEPAK SINGH)  
COURT MASTER (SH)



(ANJU KAPOOR)  
COURT MASTER (NSH)

-- True Copy --



Aagney Sail &lt;aagneysail@gmail.com&gt;

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## Reply to Appeal No. 08/2023 - Thomas Fernandes & Ors.. Vs The GCZMA & ors.

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**Aagney Sail** <aagneysail@gmail.com>

Mon, Feb 19, 2024 at 6:43 PM

To: tonyferns3@rediff.com, Shivshankar Swaminathan <shivshankar.swaminathan@yutilaw.com>, adv.jitendrasupekar@gmail.com, jitendrasupekar@gmail.com, advocatedangare@gmail.com, gcзма gcзма <goacoastalzone@gmail.com>, Chief Secretary <cs-goa@nic.in>, goaparyavaran@gmail.com

To,

1. Thomas Fernandes, Appellant No. 1.

Email: [tonyferns3@rediff.com](mailto:tonyferns3@rediff.com), [shivshankar.swaminathan@yutilaw.com](mailto:shivshankar.swaminathan@yutilaw.com), [adv.jitendrasupekar@gmail.com](mailto:adv.jitendrasupekar@gmail.com), [jitendrasupekar@gmail.com](mailto:jitendrasupekar@gmail.com)

2. Tony Fernandes, Appellant No. 2.

Email: [tonyferns3@rediff.com](mailto:tonyferns3@rediff.com), [shivshankar.swaminathan@yutilaw.com](mailto:shivshankar.swaminathan@yutilaw.com), [adv.jitendrasupekar@gmail.com](mailto:adv.jitendrasupekar@gmail.com), [jitendrasupekar@gmail.com](mailto:jitendrasupekar@gmail.com)3. The Goa Coastal Zone Management Authority (GCZMA),  
Respondent No. 1Email: [goacoastalzone@gmail.com](mailto:goacoastalzone@gmail.com), [advocatedangare@gmail.com](mailto:advocatedangare@gmail.com)

4. State of Goa, Respondent No. 2

Email: [cs-goa@nic.in](mailto:cs-goa@nic.in), [advocatedangare@gmail.com](mailto:advocatedangare@gmail.com)5. Goa Paryavaran Savrakshan Sangharsh Samitee,  
Respondent No. 4Email: [goaparyavaran@gmail.com](mailto:goaparyavaran@gmail.com)

Sir,

Please find attached the reply affidavit of Respondent No. 3 to Appeal No. 08/2023 - Thomas Fernandes & Ors.. Vs The GCZMA & ors.

Kindly acknowledge receipt of the same.

Thank You,

Adv. Aagney Sail,  
Counsel for Respondent No. 3,  
Mobile: +91.9810076618

**Reply to Appeal.pdf**

1663K

-- True Copy --