

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,

WESTERN REGION BENCH, PUNE

APPEAL NO _____ OF 2020

SHRI JOAQUIM PATRICK FERNANDES . . . APPELLANT

V.

GOA COASTAL ZONE MANAGEMENT AUTHORITY

Through its Member Secretary & Ors . . . RESPONDENTS

REPLY ON BEHALF OF RESPONDENT NO.

3(d)

MAY IT PLEASE YOUR LORDSHIP:

Respondent no. 3(d) most respectfully states and submits as under:

1. By the present appeal the Appellant once again challenges the Order passed by theLd. Goa Coastal Zone Management Authority (hereinafter referred to asGCZMA) directing the Appellant to demolish the compound wall constructed by him in violation of the CRZ Regulations.
2. Previously another Order for demolition of the compound wall, namely, Order dated 27/12/2018 passed by the Hon'ble GCZMA was challenged by the Appellant before this Hon'ble Court in Appeal No. 08/2019 on the ground that the compound wall was repaired pursuant to *alleged*Permission No. 8/89-90



bearing reference No. VP/MND/PER/NOC/1989-90/JPF dated 04/10/1989 (hereinafter referred to as "**alleged Permission No. 8/89-90**") granted by the Village Panchayat Mandrem and thus contending that the compound wall existed prior to coming into force of the CRZ Regulations.

3. Respondent No. 3(d) humbly submits that considering the plea raised by the Appellant, this Hon'ble Court remanded the matter for fresh decision to the Hon'ble GCZMA.
4. Respondent No. 3(d) humbly submits that upon remand the Hon'ble GCZMA, after hearing the parties, decided in its meeting held on 20/03/2019 to verify the authenticity of the alleged Permission No. 8/89-90 from the Village Panchayat Mandrem and accordingly called upon the Secretary of the Village Panchayat of Mandrem to verify the alleged Permission No. 8/89-90 and submit a reply on affidavit.
5. Accordingly, the Secretary of Village Panchayat of Mandrem carried out the verification of the alleged Permission No. 8/89-90 in the records of the Village Panchayat. The Secretary also verified the Construction License Register of the Village Panchayat Mandrem for the year 1989-90 and reported by an Affidavit that:

"I have not found record pertaining to Permission No. 8/89-90 in the Construction License Register".



6. Respondent No. 3(d) respectfully states that the copy of the Construction Licences Register for 1989-90 was produced and the Affidavit filed by the Secretary further states that:

“the Village Panchayat Mandrem has issued 5 no. of Construction Licenses in the year 1989-90 and the serial number of Licenses is 01 to 05.”

7. Respondent No. 3(d) humbly states that considering the same the Hon'ble GCZMA called the parties for a personal hearing on 22/10/2019.

8. Respondent No. 3(d) humbly submits that on 22/10/2019 the Appellant filed an additional Reply in which the Appellant sought to put the blame on Village Panchayat for not maintaining its records and that the Appellant cannot be faulted for the same. The Appellant also sought to invoke the doctrine of Indoor Management against the Village Panchayat.

9. Respondent No. 3(d) humbly submits that the Reply dated 22/10/2019 filed by the Appellant was frivolous and meritless in as much as the affidavit filed by the Secretary of the Village Panchayat did not state that the records are missing or not available. Infact the Secretary of the Village Panchayat even produced the Construction License Register for the year 1989-90 which exposed the falsity of the plea raised by the Appellant and proved that the the alleged Permission No. 8/89-90 is a false, fabricated and got up document by the Appellant.

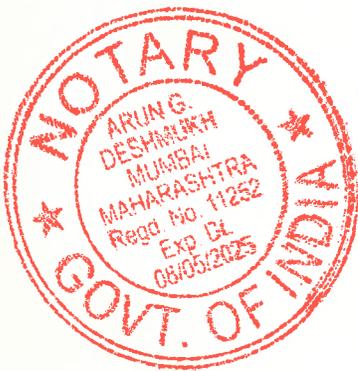


10. Respondent No. 3(d) humbly submits that at the hearing the Respondent No. 3(d), *inter alia*, pointed out that when they had applied under RTI, the PIO of Village Panchayat Mandrem had informed them that no such alleged Permission No. 8/89-90 was issued in the year 1989-1990 to the Appellant; the Respondent No. 3(d) also pointed out in the year 1989-90 there were no computers available with the Village Panchayat Mandrem but the alleged Permission No. 8/89-90 is typed on a computer which further puts a cloud of doubt on the authenticity of the the alleged Permission No. 8/89-90.
11. The Respondent No. 3(d) further pointed out that if the alleged Permission No. 8/89-90 had indeed been issued by the Village Panchayat Mandrem then there was no reason why the alleged Permission No. 8/89-90 was not produced by the Appellant when the Village Panchayat themselves came for inspection on 06/11/2015.
12. Infact even in reply to the Show Cause Notice issued by the Village Panchayat or before the passing of the Demolition Order by the Village Panchayat the alleged Permission No. 8/89-90 was not informed/disclosed by the Appellant to the Village Panchayat.
13. The Respondent No. 3(d) also stated that Appellant should place on record the original copy of the said document, which was not done. The Respondent



therefore humbly urged that the document is a false and fabricated document created only to somehow defeat the ends of justice.

14. The Respondent No. 3(d) humbly submits that the Hon'ble GCZMA after hearing the parties and on carefully considering the record found that the alleged Permission No. 8/89-90 does not seem to be proper in the eyes of law. The Hon'ble GCZMA found that if the records as maintained by the Village Panchayat of Mandrem includes a Register in respect of Construction Licenses then each and every license ought to be written and mentioned in the Register because only then the license fees are accepted and deposited in the Treasury. The Hon'ble GCZMA also found that the doctrine of Indoor Management would not be applicable in this case because if the Village Panchayat of Mandrem had indeed issued the the alleged Permission No. 8/89-90 and thereafter the records were not maintained, then it was a different case altogether but in the current case, records in the form of Construction Register is available but there is no mention made of the alleged Permission No. 8/89-90 issued in favour of the Appellant. Likewise there is always a Panchayat Body Resolution which precedes the grant of any permission/ license/ NOC which is not there in the present case.



15. The Respondent No. 3(d) humbly submits that in the circumstances the rejection of the alleged Permission No. 8/89-90as well as the passing of the Impugned Order by the Hon'ble GCZMA is just and proper and cannot be said to be an arbitrary or illegal.

16. The Respondent No. 3(d) respectfully states that the present appeal is filed only to delay the demolition of the illegal compound wall.
17. The Respondent No. 3(d) humbly submits that her father had made a complaint to the Village Panchayat of Mandrem against the illegal construction of the wall done by Appellant in the year 1998. The Respondent No. 3(d) humbly submits that the Village Panchayat of Mandrem had issued a Stop Work Notice to the Appellant *vide* Notice dated 1/03/1998. **Annexure R1** is the copy of the said Notice dated 1/03/1998. The notice also clearly mentions that the construction is without license from the Village Panchayat.
18. The Respondent No. 3(d) humbly submits that Appellant by a Letter dated 06/04/1998 the Appellant replied that it is true that he has carried out the construction of one of the side wall of the house which he alleged was, albeit falsely, was a common wall separating the house of the Appellant and that of the Respondent No. 3. The Appellant also stated that he was not aware that he is required to take any license from the Village Panchayat for construction of the wall. **Annexure R2** is the copy of the reply filed by the Appellant dated 06/04/1998.
19. The Respondent No. 3(d) humbly submits that from the Reply dated 06/04/1998 of the Appellant there are two things which become clear. Firstly, that there was no any reference made to the alleged Permission



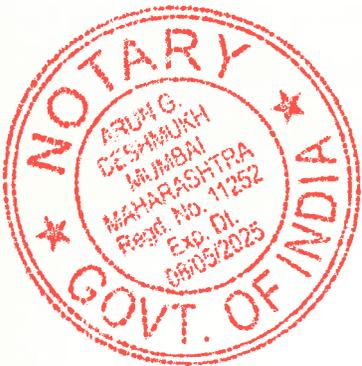
No. 8/89-90. Secondly, by Appellants own admission in the year 1998, the Appellant is not aware that any license from Panchayat is required for constructing a wall. Respondent no. 3(d) humbly submits that both these aspects further fortify that the said NOC dated 04/10/1989 is a false, fabricated and got up document.

20. Apart from the aforesaid, in the event the case of the Appellant has to be believed, that he has constructed a new house in 1989 pursuant to the alleged Permission No. 8/89-90 then there was no question of having any common wall with the house of Respondent no. 3.

21. The Respondent No. 3(d) humbly submits that in September 2014, the Respondent No. 3 had filed another complaint regarding the illegal construction of compound wall to the Village Panchayat of Mandrem. The Village Panchayat issued Show Cause Notice dated 17/05/2016 to the Appellant and also conducted a survey and drew a panchanama of the illegal construction. The Village Panchayat subsequently also passed a Demolition Order directing demolition of the illegal compound wall. **Exhibit R3** is the copy of the VP Demolition Order dated 20/07/2017.

22. It is pertinent to note that, even at this juncture, the Appellant did not inform about the alleged Permission No. 8/89-90.

23. Respondent no. 3(d) humbly submits that apart from the fact that from the Construction Licence



Register and the records of the Village Panchayat exposed the falsity of the alleged Permission No. 8/89-90, the fact that the Appellant never mentioned about the alleged Permission No. 8/89-90 in the Letter dated 06/04/1998 and also prior to the passing of Demolition Order dated 24/07/2017 fortify the fact that the alleged Permission No. 8/89-90 is a false and fabricated document by the Appellant.

24. With respect to paragraph 4.1 of the Appeal, Respondent no. 3(d) denies that the house of Appellant in Survey no. 272/19 has been in existence in the said property since time immemorial or that the said house was surrounded by a compound wall. Respondent no. 3(d) states that the house of the Appellant standing in the said property is a new structure as can be seen from the photographs. Annexure R4 are the photographs of the house of the Appellant.

25. With respect to paragraph 4.2 of the Appeal, Respondent no. 3(d) denies that Respondent no. 3 was a chronic litigant. Respondent no. 3(d) denies the allegation that the Respondent no. 3 has filed complaints in all forums or all authorities or all courts as falsely alleged by the Appellant. Respondent no. 3(d) denies that the Respondent no. 3 has filed frivolous complaints or that the present complaint before GCZMA is a frivolous complaint or with any motive to harass the Appellant as alleged.

26. With respect to paragraph 4.3 to 4.19 are matters of record and the Respondent no. 3(d) craves leave to



refer and rely upon the records at the time of hearing for setting out its true import and purport.

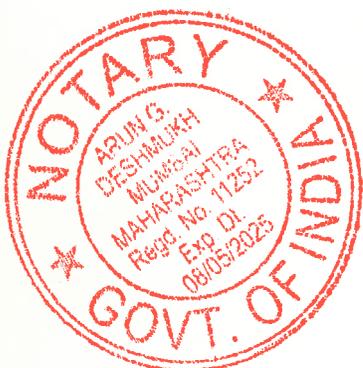
27. With respect to paragraph 4.20, Respondent no. 3(d) denies that there is any fault of the Village Panchayat or that the Village Panchayat has not maintained its records.
28. Respondent no. 3(d) denies that the ratio decidendi of the caselaw in *Murarilal Jhunjhunwala v. State of Bihar* or *DDA v. Ram Prakash* applies to the present case.
29. With respect to paragraph 4.22, Respondent no. 3(d) states that this is not a case of non availability of records or of it not being maintained or being misplaced. *Per contra*, the Village Panchayat produced the Construction Licence Register which shows clearly that only 5 licences were issued for 1989-90 and clearly exposed the falsity of the alleged Permission No. 8/89-90.
30. Respondent no. 3(d) humbly submits that if the contention of the Appellant is accepted then it will defeat the ends of justice in as much as every violator will produce false, fabricated and got up documents; the relevant authority will answer on oath that the said documents are not available or reflecting in their record and by the plea raised by the Appellant the violator will escape the clutches of the law and the penalty.



31. Respondent no. 3(d) also humbly submits that Section 114 has no application to the facts of the present case and the reliance thereon is wholly fallacious and untenable in law.
32. With respect to paragraph 4.24, the contention raised therein is denied as false and untenable in law.
33. With respect to paragraph 4.25 & 4.26, Respondent no. 3(d) denies that this case at all attracts any doctrine of indoor management. The contention raised in this behalf is wholly erroneous and untenable in law to the facts of the present case. Respondent no. 3(d) also humbly submits that the ratio decidendi of the caselaw in *Sunil Pannalal Banthia v. City & Industrial Development Corporation of Maharashtra* and in *Lakshmi Ratan Cotton Mills Co. Ltd v. J.K. Jute Mills Co. Ltd* is also wholly inapplicable to the present case.
34. Respondent no. 3(d) denies that the impugned order is bad in law or that the alleged compound wall was constructed prior to 1991 or that the same falls beyond 200m from the HTL or that any such facts were fortified by the plan issued by the directorate of settlement and land records or that the Ld. GCZMA has failed to appreciate the same.
35. Respondent no. 3(d) denies that the impugned order is perverse. Respondent no. 3(d) denies that the ratio laid down in any of the caselaws as stated is attracted to the present case.



36. Respondent no. 3(d) denies that the impugned order is bad in law for not appreciating Section 114 of the Evidence Act, 1872.
37. Respondent no. 3(d) denies that the impugned order is arbitrary in nature or suffers from conjectures or that the doctrine of indoor management applies to the present case.
38. Respondent no. 3(d) denies that the impugned order is bad in law or that the Ld. GCZMA followed any procedure which is not a fair procedure or can be said to be contrary to *Sesa Goa Ltd case*.
39. Respondent no. 3(d) denies that the impugned order is perverse or that the site inspection report was carried out in the absence of the appellant or is incorrect.
40. Respondent no. 3(d) denies that there is violation of principles of natural justice.
41. Respondent no. 3(d) denies that the Ld. GCZMA has overlooked the alleged Permission No. 8/89-90. Respondent no. 3(d) denies that the alleged Permission No. 8/89-90 is a legally enforceable document or that the same requires to be set aside by a competent authority before the Ld. GCZMA could consider it to be improper in the eyes of law.



42. Respondent no. 3(d) denies that the Ld. GCZMA has not appreciated the documentary evidence or the alleged Permission No. 8/89-90.
43. Respondent no. 3(d) denies that the compound wall is not in violation of CRZ regulations. Respondent no. 3(d) denies that the compound wall is constructed prior to the coming into force of CRZ regulations.
44. Respondent no. 3(d) denies that the Ld. GCZMA has passed the impugned order without application of mind.
45. Respondent no. 3(d) denies that the impugned order is an unreasoned order or that it lacks discussion or reasons as alleged.
46. Respondent no. 3(d) denies that the impugned order does not give any finding on the alleged Permission No. 8/89-90.
47. Respondent no. 3(d) denies that the appellant is entitled for any order or direction to quash or set aside the impugned order dated 10/12/2019 or for the stay of the impugned order.
48. Respondent no. 3(d) denies all and singular the contents of the present appeal which are inconsistent or contrary to the contents of this reply. Nothing not specifically denied may be treated to be an admission of any matter for want of specific traverse.

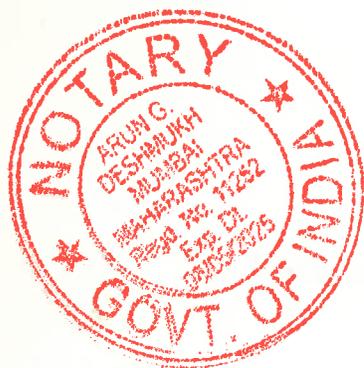


49. Respondent no. 3(d) humbly submits that she files this reply on behalf of herself and siblings and mother Respondent nos. 3(a) to (c) and that she has discussed the contents of this reply with them and that they are in agreement with the same.
50. Respondent no. 3(d) humbly submits that Hon'ble Court may please consider reporting the act of the Appellant in producing a false and fabricated document before this Hon'ble Court or to direct the Ld. GCZMA to report the matter to the Police so that such despicable and devious acts are not repeated again by violators.
51. Respondent no. 3(d) humbly submits that the appeal is wholly meritless and deserves to be dismissed with exemplary costs.

Pune, August 3, 2021

N Fernandes

Respondent no. 3(d)



VERIFICATION

I, Nisha Gabriel Fernandes, daughter of Late Gabriel Fernandes, aged about 33 years, service, residing at 403/A Golden Heights, Anant Patil Marg, Dadar, Mumbai - 400028 the Respondent no. 3(d) above named, do hereby on solemn affirmation state and verify that the contents of paragraphs 1

-14, 16 - 27, 34(p), 39(p), 43(p), 48, 49, 50 and 51 of the accompanying Reply are true to my own knowledge and what is stated in the remaining paragraphs, namely paragraphs 15, 28, 30, 31, 32, 33, 34(p), 35, 36, 37, 38, 39 (p); 41, 42, 43(p), 44 - 47 are legal submissions which I believe to be true.

Solemnly verified as aforesaid

at Mumbai on this 3rd day of August 2021.

Hernandez

DEPONENT

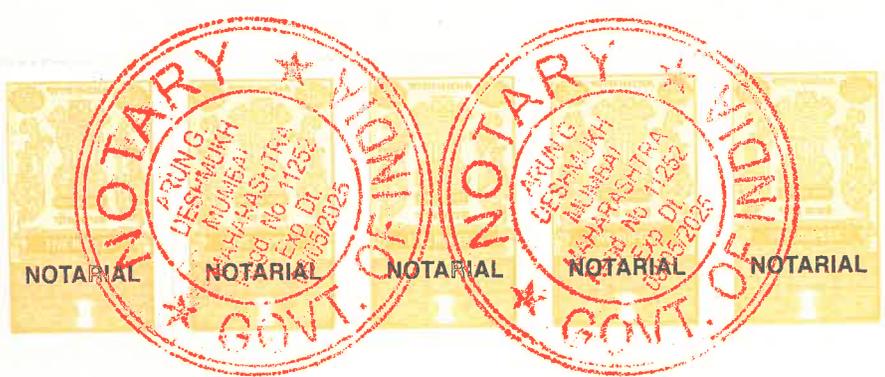
Identified by me:



BEFORE ME

[Signature]

ARUN G. DESHMUKH
REGD. No. 11252 B.Com., LL.B.,
ADVOCATE HIGH COURT
NOTARY GOVT. OF INDIA
Office : Shop No. 1, Vinayak Darshan, Apartment,
Ganesh Path Lane, Dadar (W), Mumbai-400 028.



NOTED & REGISTERED
Sr. No. 1008 Page No. 01
Date 04/08/2021

RESTRICTED



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

APPEAL NO _____ OF 2020

SHRI JOAQUIM PATRICK FERNANDES . . . APPELLANT

V.

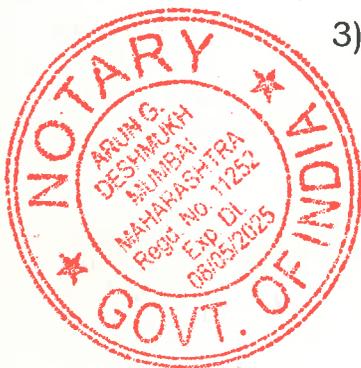
GOA COASTAL ZONE MANAGEMENT AUTHORITY

Through its Member Secretary & Ors . . . RESPONDENTS

A F F I D A V I T

I, Nisha Gabriel Fernandes, daughter of Late Gabriel Fernandes, aged about 33 years, service, residing at 403/A Golden Heights, Anant Patil Marg, Dadar, Mumbai - 400028, the Respondent no. 3(d) above named, do hereby on solemn affirmation state and submit as under:-

- 1) I say that I am the Respondent no. 3(d) to the Appeal and I am fully conversant with the facts of this case.
- 2) I crave leave to refer and rely upon the contents of the Reply as if specifically set out herein.
- 3) I say that what is stated by me in Paragraphs 1 -14, 16 - 27, 34(p), 39(p), 43(p), 48, 49, 50 and 51 of the Reply are true to my own knowledge and what is stated in the remaining Paragraphs 15, 28, 30, 31, 32, 33, 34(p), 35,



36, 37, 38, 39 (p), 41, 42, 43(p), 44 - 47 are legal submissions which I believe to be true.

4) I say that the Exhibits to the Reply are the true copies of its originals.

5) I say that what is stated above is true to my own knowledge.

Solemnly affirmed as aforesaid

at Mumbai on this 3rd day of August 2021.

Bernardos

DEPONENT

Identified by me:



BEFORE ME

[Signature]

ARUN G. DESHMUKH
REGD. No. 11252 B.Com., LL.B.,
ADVOCATE HIGH COURT
NOTARY GOVT. OF INDIA
Office : Shop No. 1, Vinayak Darshan, Apartment,
Ganesh Peth Lane, Dadar (W), Mumbai-400 028.



NOTED & REGISTERED
Sr. No. 1009 Page No. 01
Date 04/08/2021

RESTRICTED

Phone : 297222



VILLAGE PANCHAYAT MANDREM

TALUKA, PERNEM - GOA

403 527

VIP/M/ Ref: No. VPM/33/1/7/98

Date 1/2/98

SHOW CAUSE NOTICE,

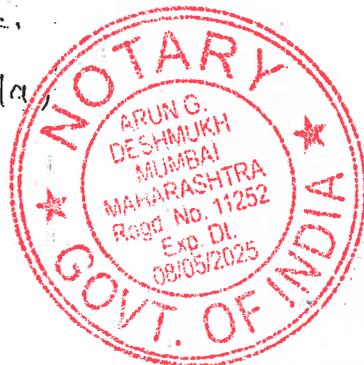
Notice under sub-section (3) and (4) of Section 66 of Goa Panchayat Raj Act, 1994

WHEREAS appears to me from available information that shri Joaquim Fernandes Jojunswada - Mandrem, has created without valid Permission from the Village Panchayat of Mandrem the Building ^{of side wall} ~~structure~~ the details of which are as under

1. Nature of construction - Sidewall with stone block.
2. Whether new construction
Reconstruction or extension
to existing house - Reconstruction of one side wall
at side of Gabriel ~~batto~~ Fernandes.
3. Area occupied - 8.60 meter wall construction
done plus 2.65 meter height
is 2.90 meter from ground.
4. Material used - stone block.
5. Location (survey No.)
Waddo - Junaswada.
6. Nature of roof pattern - ~~api~~
7. Approximate estimate cost
of the construction - 10,000

I therefore sanction of V.P. Mandrem hereby assume the Powers of the said Panchayat under Sec. 66 of the said Act and direct shri Joaquim Fernandes Jo Junaswada, Mandrem to Show Cause within a period of seven days from the receipt this notice as to why the above said construction shall not be demolished and

Secretary
Village Panchayat



Phone : 297222



VILLAGE PANCHAYAT MANDREM

TALUKA, PERNEM - GOA

403 527

V/P/M/ Ref: No. V/P/M/33/1077/98

Date 1/3/98

the cost which will be incurred there of shall not be recovered from you in the manner's an area of land Revenue or a Tax imposed under.

The said Act if shri Joaquim Fernandes fails to show cause as aforesaid further action under section 66 of the said Act shall be taken in the matter.

Yours faithfully,

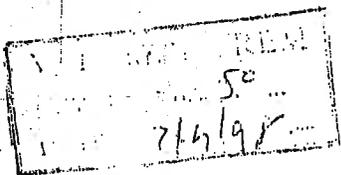
Copy To, shri Joaquim Fernandes

Copy to

1. Francis D'souza, mandre.
2. B.D.O Pernem for information.
3. office file.



Secretary
Village Panchayat
Mandrem - Goa



From:- Mr. Joaquim Fernandes
Mandrem, JUNIASWADA
Pernem, Goa.
6/4/98.

To,

The Sarpanch
V. P. of Mandrem,
Pernem, Goa.

Sir,

Ref:- Your Show Cause Notice dated
1st March, 1998 bearing No.
VPM/33/1077/98.

The undersigned is in receipt of the aforesaid notice and begs to reply the same as under:-

It is true that the undersigned has carried out the reconstruction of one of the side wall of the house. It is stated that earlier the said wall was a common wall separating the house of the undersigned and that of Gabriel Fernandes. It is stated that the said Gabriel Fernandes demolished the said common wall without our consent and knowledge and put up altogether a new construction of a building in the place of an old house which was existing. The undersigned states that as a result of the demolition of the common wall the same got totally damaged and the undersigned had no privacy as the said wall was totally damaged with holes existing therein. As the undersigned had no other option the undersigned carried out the construction of the side wall in order to protect his house from being further damaged.

The undersigned incurred an expenditure of Rs.5000/-




Secretary
Village Panchayat
Mandrem - Goa

to carry out the construction of the said wall. If the said wall was not constructed on urgent basis the Applicant was running a risk of the entire house being collapsed. The undersigned has not violated any regulations of the local Panchayat as the undersigned was not aware that he required to take licence from the Panchayat for constructing a wall.

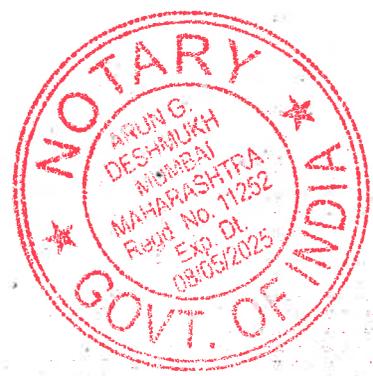
Under the circumstances it is submitted that no serious view in the matter be taken and accordingly the matter be compounded being the first occasion.

Yours faithfully,

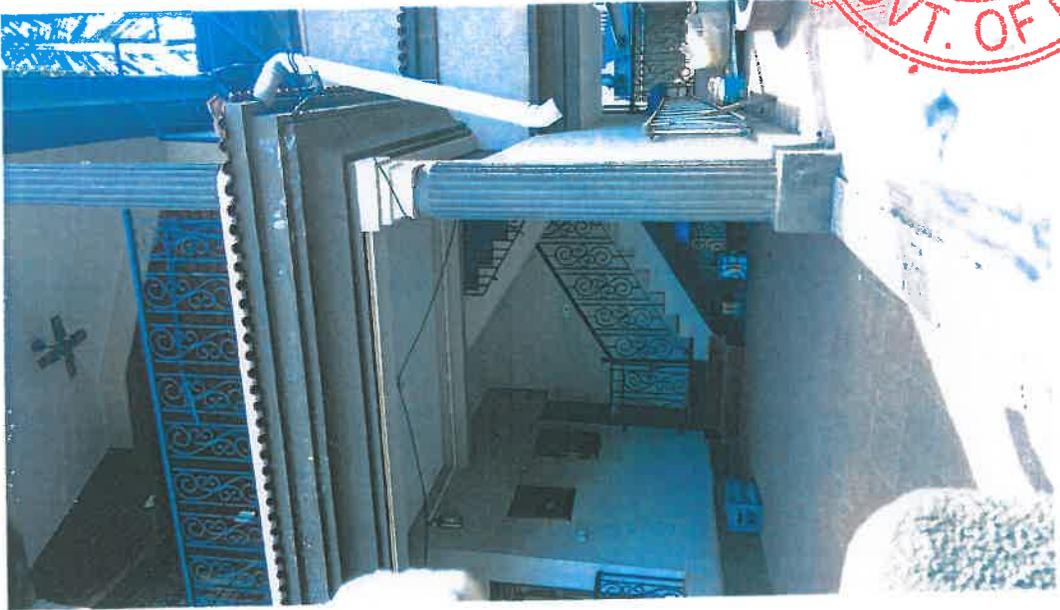
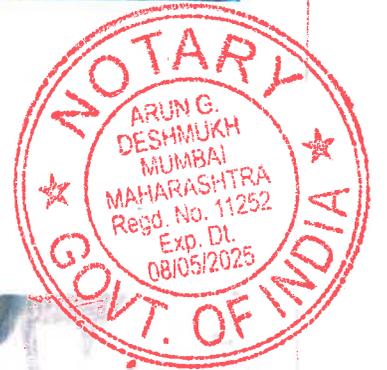
J. Fernandes

(Joaquim Fernandes)

Secretary
Village Panchayat
Mandrem - Goa



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VILLAGE PANCHAYAT MANDREM

Mandrem Pernem Goa

Ph. No. (0832)2247222

Email ID: vpmandrem@yahoo.com

Ref. No. VP/MAN/PER/FINAL NOTICE/2017-2018/383

Date: 26/07/2017

DEMOLITION NOTICE

ORDER CUM NOTICE UNDER SUB-SECTION (4) OF SECTION 66 OF GOA PANCHAYAT RAJ ACT 1994.

Whereas it is brought to the noticed by Mr. Gabriel Fernandes resident of Junaswada Mandrem Goa that you have constructed compound wall in Survey No. 272/19 situated at Junaswada Mandrem Goa.

AND WHEREAS in compliance to the said, this panchayat conducted a survey and drew a Panchanama of your illegal construction of compound wall on 06/11/2015 with due notice to you.

The details of the said construction are as follows :-

1. Nature of construction :- compound wall
2. Whether new construction, Reconstruction or extension
To existing house :- Existing compound wall
3. Area occupied by structure /Dimension (Length and Breath approx.) :- 13 mts (Running mts) & height=1.5 mt
4. Location Sy. No. / Waddo: - 272/19, Junaswada Mandrem Goa.
5. Material used :- stone, Sand, cement.

AND WHEREAS a Show Cause Notice was served to you under Ref. No. VP/MAN/PER/illegal/2017-2018/533 dtd. 17/05/2016 directing you to Show Cause within a period of seven days, but your reply is not satisfactory AND failed to produce Valid permission for above said construction.

The matter was discussed in the Panchayat body meeting held on 29/06/2016 after discussion it was unanimously resolved among present members to direct you as under.

You are hereby directed to demolish the said illegal construction situated at Junaswada Mandrem Pernem Goa within the period of fifteen days on receipt of this notice. Failing which this Panchayat will demolish the same without any further notice to you and the cost incurred thereof will be recovered from you in the same manner as recovery of taxes and other dues.

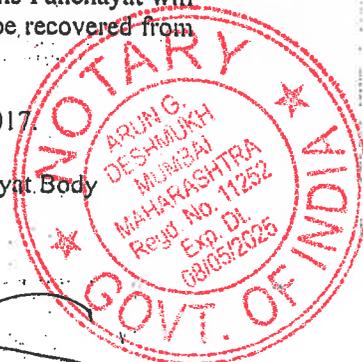
Given under my hand and office seal of the Panchayat on this 12th day of July 2017.

By order of the Panchayat Body

To: 17
Mr. Joaquim Fernandes
R/o, Junaswada, Mandrem,
Pernem Goa.

Copy to:-

- 1) Mr. Gabriel Fernandes
R/o, Junaswada Mandrem,
Pernem Goa.
- 2) V. P. Panch,
V. P. Mandrem
- 3) The Block Development Officer, Pernem Goa.
- 4) O.C.



Secretary
Village Panchayat
Mandrem Goa