182

NOTARY ADV. SWARAJ SHRIKANT PHADTE Bardez-Goa Reg. No. 43349 Exp. on 21-02-2030 GOVT. OF INDIA

BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH, PUNE

Appeal No. 08/2025 (WZ)

Mr. Dilip Kandolkar ... Applicant

Versus

Goa Coastal Zone Management Authority and Anr. ... Respondents

AFFIDAVIT IN REPLY ON BEHALF OF RESPONDENT NO.2 TO THE APPLICATION FOR CONDONATION OF DELAY FILED BY THE APPLICANT.

MAY IT PLEASE YOUR LORDSHIP:

I, Mr. Thomas Mathew, son of K V Thomas, aged 59 years, Indian National, residing at H. No.17, St. Anthony Road, Anagalpura, Doddagubbi, Bengaluru, Karnataka, 560077, the constituted Attorney of the Respondent no.2, received a copy of application for Condonation of delay

183

filed by the Applicant and having perused the same by way of reply most respectfully submits as under:

1. I am the constituted attorney of the Respondent no.2, and I am conversant with the facts and circumstances of the present case and I am competent to file the present affidavit on behalf of Respondent no.2.

2. I am filing the present Affidavit for the purpose of objecting to the Application for Condonation of Delay filed by the Applicant. I reserve the right to file a detailed reply on the merits of the matter if this Hon'ble Tribunal condone the delay and order registration of appeal.

3. I specifically deny each and every inconsistent averments and pleadings made in the application for condonation of delay and every such denial deemed to have been incorporated in this reply and nothing deemed to have been admitted unless admitted specifically in writing by me.

4. The application under reply is liable to be rejected as the Applicant has come before this Hon'ble Tribunal with most unclean hands and suppressing material facts from this Hon'ble Tribunal. The application is liable to be rejected as Applicant failed to substantiate the reasons for filing the appeal belatedly.

5. The Applicant has filed a false affidavit before this Hon'ble Tribunal stating that the Applicant was never served the order dated 05.10.2018, passed by the Respondent no.1 ordering demolition of illegal construction carried out by the Applicant in their property bearing survey no.136/13 and 136/14 of village Candolim which is a complete lie and false. Against the order dated 05.10.2018 the Applicant has filed a review application before the Respondent no.1 only on 12.09.2019. Prior to filing of the Review Application the Petitioner on 17/05/2019 filed Writ Petition No. 519/2019 before the Hon'ble High Court

of Bombay at Goa challenging the very same Impugned Order dated 05/10/2018.

6. I say that the pleadings of the Applicant in Writ Petition No.519/2019 is totally contrary to what has been stated in the application under reply. The Respondent No. 2 shall rely upon the Writ Petition annexed to the appeal of the Applicant at the time of hearing of the application to demonstrate that the Applicant has filed false affidavit before this Hon'ble Tribunal. The Applicant is liable to be prosecuted for perjury and this Respondent reserves his right to file appropriate application in that behalf.

7. I say that the Applicant is in the habit of telling lies and making false statements before the Judicial Forums. The Applicant in Writ Petition No.519/2015 made a complete false statement in the Hon'ble High Court on 23/08/2019 purely based on which the Hon'ble High Court was pleased to record in its Order dated 23/08/2019 that "*the Ld. Counsel for the*

Petitioners states that an Application for Review is filed and is pending before the GCZMA". Considering the statement made by the Petitioner the Hon'ble High Court sought instruction from the Advocate appearing Respondent No.1 who in turn informed the Court that the Application for Review will be disposed off within four weeks. I say that the Applicant who was the Petitioner in Writ Petition No.519/2019 played fraud on the Hon'ble High Court by making false statement about filing of Review Application before Respondent No.1 and its pendency and when there was no Review filed at all on 23/08/2019. The Review Application was filed only on 12/09/2019. This conduct of the Applicant has to be taken serious note by this Hon'ble Tribunal and accordingly discretion of this Hon'ble Tribunal in condoning the delay be exercised against the Applicant. **Annexed hereto is the Copy of Order dated 23/08/2019 and Copy of Review**

187

Application dated 12/9/2019 as Annexure A Colly.

8. I say that during the pendency of Proceeding before the Respondent No.1, Shri. Ramesh G. Kandolkar expired. Upon his death necessary Application was filed to bring legal heirs on record and accordingly his son, the Applicant was brought as the legal heir of Shri. Ramesh G. Kandolkar. The Applicant, representing the deceased filed reply before Respondent No.1 on 14/11/2017. Even though the proceedings were conducted after due process of law , at the time of issuing the Impugned Order, Respondent No.1 made a clerical error by mentioning the name of the deceased and issuing direction to the deceased person instead of issuing directions to the Applicant. I say that the said error is purely clerical and does not affect its validity. I specifically deny that the Impugned Order is illegal or void –ab-initio. Therefore the Applicant conveniently and with

dishonest intention made false averments in order to gain undue advantage from this Hon'ble Tribunal. The action of consistently making false statements on oath and based on such false statements obtaining reliefs from the Court of Law amounts to fraud on the Court. A person who plays fraud on court not only entitled for any relief but also liable for prosecution. Therefore the Respondent urges this Hon'ble Tribunal to initiate appropriate proceedings against the Applicant.

9. I say that vide Order dated 20/10/2019, the Respondent No.1 disposed off the Review Application by deciding that the Structure belonging to Ramesh Kandolkar father of the Applicant can be given some leverage. The Applicant accepted the said decision without agitating the issue of issuing Order against dead person by Respondent No.1. Since according to the Applicant the decision dated 20/10/2019 was found in his favour, the Applicant immediately

187

withdrew the Writ Petition filed before the Hon'ble High Court without reserving any right. Therefore the Applicant is not entitled to agitate the issue of issuing order in the name of his late father.

10. I specifically deny the contents of para 4 of the application as the contents thereof are fraught with malfides and falsity. The Applicant is making inconsistent and concocted statements before different judicial forums and seeking redressal of his grievances. Therefore the application is liable to be rejected with heavy cost and appropriate proceedings may be initiated against the Applicant including contempt proceedings and he be punished in accordance with law.

11. The Applicant cannot invoke the cause of filing proceedings before wrong forum or proceedings pending before the Hon'ble High Court in order to come out of the limitation period as the Applicant inspite of knowing that no review is permissible by

Respondent No.1 preferred to file Review Application before the Respondent no.1 after the limitation period for filing appeal expired. The NGT Act, 2010 stipulates that within a period of 30 days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal. The appeal filed by the applicant is much beyond the limitation period as prescribed. It is settled law that while excluding the period of limitation spent before the improper forum, the court has to see whether the proceedings were filed before a wrong forum within the period of limitation.

12. I say that the Applicant was aware of the Impugned Order on 13/05/2019 or on 14/05/2019 as pleaded by him in his Writ Petition. The Review was filed only on 12/09/2019 which is much beyond the limitation period as prescribed. Therefore filing of Review Application and its pendency cannot be considered for condoning the delay.

13. The Hon'ble High Court while disposing the Writ Petition also observed that the appropriate remedy for the Applicant to challenge the order passed by the GCZMA to file appropriate proceedings before this Hon'ble Tribunal. The Hon'ble High Court of Bombay at Goa was pleased to dispose off the Writ Petition No.293/2019 on 16.02.2024. The applicant inspite of being party to the said Writ Petition preferred not to challenge the impugned order dated 01.10.2018 before this Hon'ble Tribunal and filed MCA No. 2381/2024 (F) in Writ Petition No.519/2019 before the Hon'ble High Court of Bombay at Goa on 21.09.2024. **Annexed hereto is the copy of the relevant filing details of MCA no. 2381/2024(F) as Annexure B .**

14.I say that during the period of disposal of writ Petition no. 293/2019 and the date of filing of MCA No.2381/2024(F) i.e. from 16.02.2024 till 21.09.2024 (filing date of MCA NO.2381/2024(f)) there was no

proceedings pending before any Court or authority concerning the subject matter. Therefore, the delay in filing the present appeal for a period of almost more than 7 months cannot be condoned.

15. I say that the order dated 24.09.2024 and order dated 08.10.2024 are obtained from the Hon'ble High Court by the Applicant by playing fraud on the Hon'ble High Court by supressing the material facts that the appeals are already time barred. The Applicants have conveniently not produced the application before this Hon'ble Tribunal in order to prevent this Hon'ble Tribunal from knowing the truth. This Respondent was not served with the copy of Misc. Civil Application No.2381/2024 or any Application filed by the Applicant before the Hon'ble High Court seeking protection after the Hon'ble High Court passed the Order dated 16/02/2024.

16. I say that based on the Complaint filed by the Respondent No.2 along with the Impugned Order the

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Respondent No.1 has passed three other Orders based on the same material and evidence on record. One of the Order was made against one Shri. Nitin S. Kandolkar, directing him to demolish a compound wall and staircase raised by him in survey No.136/14 and 136/16 of Village Candolim identified by the DSLR Report identified as Structure 'D' in terms of the directions issued by this Hon'ble Tribunal in Original Application No.88/2016(WZ) dated 06/07/2018. **Annexed hereto is the Copy of Order dated 06/07/2018 as Annexure C.**

17. Aggrieved by the said Order dated 05/10/2018 passed by Respondent No.1, the said Nitin S. Kandolkar filed appeal No.77/2018(WZ) before this Hon'ble Tribunal and this Hon'ble Tribunal vide Order dated 29/01/2020 dismissed the Appeal by a reasoned Order which has attained finality for want of challenge. **Annexed hereto is the Copy of Order dated 05/10/2018 passed by the**

Respondent No.1 and the Order dated 29/01/2020 passed by this Hon'ble Tribunal as Annexure D Colly.

18. I say that in view of Order dated 29/01/2020 the issues raised in the Appeal filed by the Applicant no more survives and cannot be re agitated before this Hon'ble Tribunal.

19. It is therefore prayed that Application filed by the Applicant be dismissed and consequently the Appeal also be dismissed.

I say that whatever has been stated herein above are true to my knowledge based on the records maintained and the legal submission are based on legal advice received which I believe the same to be true.

Solemnly affirm at Panaji Goa

On this 15th day of March, 2025.

Deponent

Identified By:

Adv. P. Kholkar

195

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ADV. SWARAJ SHASHIKANT PHADTE
Bardez, North Goa
Reg. No. 43319
Exp. On 21-02-2030

GOVT. OF INDIA

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Solemnly affirmed before me by
Shri/~~Smt~~ Thomas Mathew
who is identified before me by
~~Shri/Smt~~ Adv. P. Kholkar
whom is personally known to me
on this 17th day of March 2025

ADV. SWARAJ SHASHIKANT PHADTE
ADVOCATE & NOTARY
(GOVT. OF INDIA)
BARDEZ / NORTH GOA
REG. No. 38/25 DATED 17/03/2025

Annexure A . Colly 90

196

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 519 OF 2019

DILIP KANDOLKAR., ... Petitioner

Versus

GOA COASTAL ZONE MANAGEMENT AUTHORITY, THR. ITS MEMBER SECRETARY, GOVT. OF GOA AND 4 ORS., ... Respondents

Mr. Sarvesh Dinker Kamat Malyeker, Advocate for the Petitioner.

Mr. Deep D. Shirodkar, Addl. Government Advocate for Respondent Nos.1,2 3 & 4.

WITH
Writ Petition No.522/2019

Mr. Sarvesh Dinker K. Malyeker, Advocate for the Petitioner.

Mr. V. Sardessai, Addl. Government Advocate for Respondent Nos. 1, 2, 3 & 4.

WITH
Writ Petition No. 520/2019.

Mr. Sarvesh Dinker K. Malyeker, Advocate for the Petitioner.

Mr. V. Sardessai, Addl. Government Advocate for Respondent Nos. 1, 2, 3 & 4.

WITH
Writ Petition No. 308/2019

Mr. Vledson Lucio Braganza for the Petitioner.

Mr. T. Gawas, Addl. Government Advocate for Respondent Nos. 1, 2, 3 and 4.

Mr. J. Supekar, Advocate for Respondent No.5.

WITH
Writ Petition No.294/2019
Mr. Vledson Lucio Braganza for the Petitioner.

OF BOMBAY AT GOA
PANAJIM-GOA

Ms. Amira Razaq, Government Advocate for Respondent Nos. 1, 2, 3 & 4.

WITH
Writ Petition No. 293/2019

Mr. Vledson Lucio Braganza for the Petitioner.

Mr. J. Supekar, Addl. Government Advocate for Respondent No. 5.

Coram:- C. V. BHADANG &
NUTAN D. SARDESSAI, JJ.

Date:- 23rd August, 2019

P.C.:

The learned Counsel for the petitioners states that an application for review is filed and is pending before the GCZMA.

2. The learned Addl. Government Advocate on instructions states that the application will be disposed of within four weeks. The statement is accepted.

3. Stand over to 06.09.2019.

NUTAN D. SARDESSAI, J. C. V. BHADANG, J.

MF/-

Annexure A Colly

EXHIBIT A-7 Colly

82

198

Date: 12/9/2019

From,
Mr. Dilip Kandolkar,
House no. 462, Vaddi,
Candolim, Bardez-Goa.

To,
The Member Secretary,
Goa Coastal Zone Management Authority,
1st Floor, Pt. Deendayal Upadhay Bhavan,
Behind Pundalik Devasthan,
Porvorim, Goa.

12/09/19
O/o. Member Secretary
Goa Coastal Zone Management Authority
C/o. Department of Science, Technology
& Environment. (Govt. of Goa)
1st Floor, Pandit Deendayal Upadhyay Bhavan
Pundalik Nagar, Porvorim-Goa. 403521

Sub:- Review Petition in respect of Direction under Section 5 of the Environment (Protection) Act, 1986, read with Rules of the Environment (Protection) Rules, 1986 bearing Reference no. GCZMA/N/ILLE-Compl/16-17/73/1141 dated 1/10/2018.

Sir,

1. This Authority has been pleased to issue Direction under Section 5 of the Environment (Protection) Act, 1986, read with Rules of the Environment (Protection) Rules, 1986, dated 5/10/2018 which copy was acquired by me vide Right to Information Act, 2005. The Directions were never served upon me. In terms of the Direction this Authority has directed demolition identified as structure A alongwith temporary cloth fencing and stair case as identified in the DSLR plan in Survey no. 136/14, 136/13 of Candolim Village, Bardez Taluka as depicted in the DSLR plan in terms of decision taken in the 183rd

GCZMA meeting held on 31/8/2018 and the land to be restored to its original condition, within 30 days from the date of receipt of this Order.

2. At the outset, I submit that the said Direction dated 5/10/2018 have been passed by this Authority in complete breach of the Principles of natural justice and fair play and hence I most respectfully submit that a Review Petition is therefore maintainable before this Hon'ble Authority. It is submitted that the Directions have been passed against a dead person and hence the same constitutes procedural lapse on the part of this Authority. Directions were issued against the dead person and these directions were never served upon me. I learnt about the same when demolition squad came for demolition. After learning about the directions, I immediately applied for the same under RTI.

3. It is submitted that the fact that the proceedings were been carried out in the name of a dead person were specifically brought to the notice of this Authority vide my reply but no further steps were taken to correct the same and this Authority continued the proceedings against the dead person. It is submitted that the structure belongs to

me and continuance of proceedings against a dead person therefore constitutes violation of principles of natural justice and fair play. For this reason alone, the directions dated 5/10/2018 are required to be reviewed.

4. It is submitted that the Directions are also required to be review in view of the fact that the same has been passed only on the basis of the DSLR report. The DSLR conducted Site Inspection/Mapping of the structure at site on 18/7/2018 and 19/7/2018 respectively. The DSLR was pleased to forward mapped survey plan vide its Letter dated 31/7/2018.

5. The matter was then taken up in the 181st Meeting wherein the DSLR's mapped survey plan was considered and direction came to be issued to all the parties to collect the necessary copies from the office of the GCZMA. Further, it also directed final hearing of the Complaint on 31/8/2018. It is very pertinent to note here that the Advocate appearing on behalf of the Respondent filed an Application before this Authority who could not remain present for the hearing on 14/8/2018 seeking time to take instructions from the

client and to file detailed Reply to the mapped survey plan submitted by the DSLR vide Letter dated 31/7/2018.

6. It is submitted that the Authority took up the Complaint in its 183rd Meeting and sought to hear the Complaint finally. At which point the Advocate objected to the hearing of the matter and called upon this Authority to refer to his Application dated 14/8/2018 wherein he has sought time to file detailed Reply to the DSLR mapped survey plan dated 31/7/2018. The said request was however not considered by this Authority and the Authority went ahead to decide the Complaint finally.

7. This Authority in its 183rd Meeting made the following decision:-

"The Complainant alongwith his advocate Wilson Braganza was present to defend his matter. Advocate Pankaj Verenkar appeared on behalf of respondents Hanumant Kandolkar, Deepak Kandolkar and Ramesh Kandolkar. Advocate Nitin Sawant appeared on behalf of respondent Nitin Kandolkar.

The complainant pointed out the plans depicting that the structures (A, B, C and D) as per DSLR plan dated 02/08/2018 are new and encroaching into property of the complainant. He further produced

the photographs showing ongoing construction at site during mapping and site inspection. The complainant referred to letter dated 27/12/2016 and photographs annexed therein. The complainant referred to the photographs that 1st floor is completed by the respondent and 2nd floor construction is in progress. With respect to structure D the said structure is covered with Zinc sheet. The said structure is G+1 and used for commercial activity. The compound wall is encroaching property of the complainant and public road.

The advocate on behalf of respondent interalia submitted with respect to structures (A, B and C) structure C belongs to Hanumant Kandolkar and the said structure is pre-1991. The advocate referred to House tax certificate and village Panchayat letter. He further stated that no reconstruction has been carried out and admittedly repair of roof has been carried out without GCZMA permission. With respect to structure A and B belongs to Deepak Kandolkar and Ramesh Kandolkar referred to judgement passed by Hon'ble High Court of Bombay at Goa in favour of the respondent. The respondents placed reliance upon house tax receipts.

The authority noted that the existing structures in the Survey no.136/13 and 136/16 of village Candolim are in variance with structures shown in of DSLR plan. The respondents were asked to explain this variance by way of approved plan or permission which the respondents couldn't explain".

8. It is respectfully submitted that the aforesaid decision is in complete breach of the Principles of natural justice and fair play in as much as no opportunity has been granted to the Respondent to oppose the site inspection report submitted by the DSLR dated 31/7/2018. In fact, a perusal of the Direction would reveal that the Complaint and the legality of the structure came to be decided purely and only on the basis of the Report submitted by the DSLR dated 31/7/2018.

9. It is therefore submitted that the decision of this Authority taken in its 183rd Meeting which has culminated into Direction dated 5/10/2018 is illegal, ultra vires and in total breach of the Principles of natural justice and fair play.

10. It is therefore submitted that in view of the fact that firstly, the Directions have been passed against a dead person and secondly, that no opportunity was given to the undersigned to oppose the Inspection Report submitted by the DSLR dated 31/7/2018 which Report is the only thing considered by this Authority while issuing the Demolition Order dated 5/10/2018, the undersigned is filing the present Application for Review.

11. It is submitted that this Authority has ample powers to Review its decision which have been taken in breach of the Principles of natural justice and fair play.

12. It is therefore prayed that this Hon'ble Authority may be pleased to Review the Direction under Section 5 of the Environment (Protection) Act, 1986, read with Rules of the Environment (Protection) Rules, 1986, dated 5/10/2018 passed by this Hon'ble Authority.

13. In the meantime, until the decision is taken on the present Review Petition this Hon'ble Authority may be pleased to stay the operation of the Direction dated 5/10/2018 passed by this Hon'ble Authority.

Thanking you,

Yours sincerely,

(Dilip Kandolkar)

Annexure B.

205

High Court of Bombay- High court of Bombay at Goa

Back

Case Details

Case Code	**202400023812024**
Filing Number	**MCA/2381/2024**
Filing Date	**21-09-2024**
CNR Number	**HCBM050031812024**

Petitioner	DILIP KANDOLKAR.,
	Versus
Respondent	GOA COASTAL ZONE MANAGEMENT AUTHORITY, THR. ITS MEMBER SECRETARY, GOVT. OF GOA AND 4 ORS., THE COLLECTOR AND DISTRICT MAGISTRATE (NORTH) THE DEPUTY COLLECTOR AND S.D.O. OF BARDEZ STATE OF GOA THR. CHIEF SECRETARY NANDALAL KHEMKA THR POA

Document Details

Sr. No.	Document No.	Date of Receiving	Filed by	Name of Advocate	Document Filed
1	1	01-10-2024	GOA COASTAL ZONE MANAGEMENT AUTHORITY, THR. ITS MEMBER SECRETARY, GOVT. OF GOA AND 4 ORS.,	DEEP D. SHIRODKAR	MEMO OF APPEARANCE

Disposed

Date of Disposal	**24-09-2024**

Acts

Under Act(s)	Under Section(s)
CODE OF CIVIL PROCEDURE	.

Orders

Order Number	Judge	Order Date	Order Details
1	HON'BLE SHRI JUSTICE M. S. KARNIK,HON'BLE SHRI JUSTICE VALMIKI MENEZES	24-09-2024	Final/Oral Order

Back

Annexure C.

206

73

BEFORE THE NATIONAL GREEN TRIBUNAL, WESTERN ZONE BENCH, PUNE

Original Application No. 88/2016 (WZ)
Disposed of on 06-07-2017

In the matter of:-

Nandlal Khemka (Karta HUF) Vs. GCZMA & Ors.

CORAM: HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

Present: Applicant : Mr. V.Korgaonkar, Adv.
Respondent Nos.1,7, 8,9 : Ms. Fawia M. Mesquita, Adv.

Date and Remarks	Orders of the Tribunal
Item No.11 6th July, 2018	This Original Application is filed against the respondent Nos.2, 3, 4 and 5 for having allegedly raised constructions on the sea beach in violation of the CRZ Notification. The case was first taken cognizance of on 13th July, 2016 and thereafter periodical directions were issued upon the GCZMA, respondent No.1, for taking appropriate steps for eviction of the persons who were in breach of the CRZ Notification. Without further entering into the merits of the case, it would be sufficient to note that the GCZMA authority have expressed their inability to remove the encroachments as the respondents had been obstructing the work and resorting to violence. Ms. Fawia M. Mesquita, learned Counsel for respondent No.1, has placed before us today letter dated 4th April, 2018 submitted by Suptd. Of Survey & Land Records, Panaji-Goa intimating that survey and mapping of the area in question assigned to them could not be carried out by the Field Officer as the respondents had objected

Annexure C.

206

72

BEFORE THE NATIONAL GREEN TRIBUNAL, WESTERN ZONE BENCH, PUNE

Original Application No. 88/2016 (WZ)
Disposed of on 06-07-2017

In the matter of:-

Nandlal Khemka (Karta HUF) Vs. GCZMA & Ors.

CORAM: HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

Present: Applicant : Mr. V.Korgaonkar, Adv.
Respondent Nos.1,7, 8,9 : Ms. Fawia M. Mesquita, Adv.

Date and Remarks	Orders of the Tribunal
Item No.11 6th July, 2018	This Original Application is filed against the respondent Nos.2, 3, 4 and 5 for having allegedly raised constructions on the sea beach in violation of the CRZ Notification. The case was first taken cognizance of on 13th July, 2016 and thereafter periodical directions were issued upon the GCZMA, respondent No.1, for taking appropriate steps for eviction of the persons who were in breach of the CRZ Notification. Without further entering into the merits of the case, it would be sufficient to note that the GCZMA authority have expressed their inability to remove the encroachments as the respondents had been obstructing the work and resorting to violence. Ms. Fawia M. Mesquita, learned Counsel for respondent No.1, has placed before us today letter dated 4th April, 2018 submitted by Suptd. Of Survey & Land Records, Panaji-Goa intimating that survey and mapping of the area in question assigned to them could not be carried out by the Field Officer as the respondents had objected

Item No.11 **6th July, 2018**	the work. The letter be taken on record. Upon perusal of the record we find that the respondent Nos.2 to 5 have not been appearing for several dates commencing from August, 2017 and prior to that, they had been doing so intermittently through different counsel. They are absent even today. We find substance in the submissions of the learned Counsel and the prayers made on behalf of the applicant and the respondent No.1 quite justified. We, accordingly, direct the District Magistrate and the Superintendent of Police, North Goa to ensure that the surveyors are provided with sufficient police protection at the time when they are undertaking the works. As suggested on behalf of the respondent No.1, let the survey and mapping work be taken up on 18th -19th July, 2018. The respondent No.1 shall ensure that Notices are issued to all the parties which include the applicant and the respondent Nos.2 to 5 of the date and time of the survey work. They shall also inform of this to the District Magistrate and the Superintendent of Police, North Goa to facilitate action on their part as directed by us. GCZMA shall file report of the survey and mapping work on the next date. They are also at liberty to take appropriate action for removal of the encroachments in accordance with law. **List on 10th August, 2018.** ..... **Justice S.P. Wangdi, JM** **06.07.2018** ..... **Dr. Nagin Nanda, EM** **06.07.2018**

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Annexure D colly

208

GOA COASTAL ZONE MANAGEMENT AUTHORITY

C/o Department of Science, Technology and Environment (Govt. of Goa)
1st floor, Pt. Deendayal Upadhyay Bhavan, Pundalik Nagar, Alto,
Porvorim, Bardez- Goa-403 521
www.czma.goa.gov.in

Ref. No. GCZMA/N/ILLE-Compl/16-17/73/1158 Date: 05/10/2018

DIRECTION UNDER SECTION 5 OF THE ENVIRONMENT (PROTECTION) ACT,1986, READ WITH RULE OF THE ENVIRONMENT (PROTECTION) RULES, 1986.

Sub: Directions to demolish the Compound wall, stair case and temporary structures in the property bearing Sy.nos. 136/14, 136/16, Candolim village, Bardez-Goa.

Ref. : (1) Complaint letter dated 08/06/2016 from Mr. Nandlal Khemka.
(2) Application bearing No.88/2016 (WZ) has been filed by Mr. Nandlal Khemka before the Hon'ble NGT, Pune.
(3) Complaint letter dated 31/01/2017 from Shri. Nandlal Khemka.
(4) Report of Expert Member GCZMA dated 28/04/2017.
(5) Report of Expert Member GCZMA dated 09/08/2017.
(6) Minutes of 156th GCZMA meeting held on 22/08/2017.
(7) Minutes of 158th GCZMA meeting held on 26/09/2017.
(8) Minutes of 159th GCZMA meeting held on 10/10/2017.
(9) Minutes of 163rd GCZMA meeting held on 14/11/2017.
(10) Minutes of 166th GCZMA held on 27/12/2017.
(11) Order dated 06/07/2018 passed by Hon'ble NGT in Application bearing No.88/2016 (WZ)
(12) Minutes of 181st GCZMA meeting held on 14/08/2018.
(13) Minutes of 183rd GCZMA meeting held on 31/08/2018.

WHEREAS, a complaint letter 08/06/2016 was received from Mr. Thomas Mathew on behalf of Mr. Nandlal Khemka referring to the Show Cause Notice dated 19/05/2011 issued by the GCZMA with regard to alleged illegal construction carried out in the property bearing Sy. No. 136/16 at Wadi, Candolim, Bardez – Goa.

AND WHEREAS, an application bearing No.88/2016 (WZ) was filed by Mr. Nandlal Khemka before the Hon'ble NGT, Pune challenging the alleged illegal construction in the property bearing Sy.No. 136/13 carried out by Mr. Hanumant

Kandolkar, Mr. Ramesh Kandolkar and Mr. Deepak Kandolkar and alleged illegal construction in the property bearing Sy.No. 136/16 carried out by Mr. Nitin Sadanand Kandolkar and thereby causing encroachment in the private property of Mr. Nandlal Khemka bearing Sy.No. 136/14 at vadi, Candolim, Bardez, Goa.

AND WHEREAS, an inspection of the site under reference was carried by the Expert Members of the GCZMA on 03/03/2017 .The site inspection report was submitted on 28/04/2017.

AND WHEREAS, the GCZMA was also in receipt of a complaint letter dated 31/01/2017 from Shri. Nandlal Khemka, r/o. A6, Kalandi, New Delhi, 110065, represented therein by his duly Constituted P/Attorney, Shri. Thomas Mathew, with regards to the alleged illegal construction/development in the property bearing Sy.No. 136/4 & Sy.No. 136/10 of Village Candolim, Bardez, Goa by Shri. Vernon Rodrigues, r/o. H.No. 483, Vaddi, Candolim, Bardez, Goa, without any permission/licence /N.O.C from the concern Authorities.

AND WHEREAS, another site inspection was carried out with Expert Member of GCZMA on 26/07/2017 with regard all the structures. The site inspection report was submitted on 09/08/2017.

AND WHEREAS, the matter was placed in the 156th GCZMA meeting held on 22/08/2017 wherein the authority decided as follows *"The Authority after detailed discussion and due deliberation and in view of the above decided to direct the DSLR to carry out / conduct complete survey of the property in question inorder to verify the encroachments if any and submit a superimposed plan to the GCZMA. The Authority further decided to communicate the date of site inspection for conducting DSLR survey to both the parties and further directed the parties to remain present for personal hearing on 12/09/2017. The parties present took note of the same".*

AND WHEREAS, the matter was placed in the 158th GCZMA meeting held on 26/09/2017 wherein the authority decided as follows *"The Authority heard Vernon Rodrigues and as the Complainant is absent for the hearing directed Vernon Rodrigjues to remain present before the Authority in its next meeting to be held on 10/10/2017 at 5:00 p.m. The Authority further decided to issue notice of hearing to the Complainant and all the Respondents directing them to remain present for the hearing on 10/10/2017".*

AND WHEREAS, the matter was placed in the 159th GCZMA meeting held on 10/10/2017 wherein the authority noted that *"Both the compliant as well as the*

respondents submitted that they have not received the survey report of the DSLR and sought the copy of the same. The complainant as well the respondents were asked to collect the survey report from the CRZ section of the DSLR on 11/10/2017 and the matter was fixed for hearing on 14/11/2017".

AND WHEREAS, the matter was placed in the 163rd GCZMA meeting held on 14/11/2017 wherein the authority decided as follows :- *"The Authority after detailed discussion and due deliberation and upon hearing the parties decided to keep the matter for further hearing on 29/11/2017".*

AND WHEREAS, the matter was placed in the 164th GCZMA meeting held on 29/11/2017 wherein the authority decided as follows "*Authority heard the both parties and directed complainant and Respondent to file additional reply before 12/12/ 2017. Parties are called for next hearing before this Authority on 12/12/2017".* Although the Parties are called for next hearing before this Authority on 12/12/2017.However Authority postponed its meeting to 27/12/2017 due to Winter Legal Assembly session.

AND WHEREAS, the said matter was placed before the Authority in its 166th GCZMA held on 27/12/2017 wherein Advocate Winson Braganza on behalf of the complainant Mr. Nandalal Khemkha made written submissions wherein he has objected to the findings in survey report conducted by the Department of Settlement and Land Records. He also raised an objection to the fact that the said survey was carried out without notice to his client and in absence of his client. The authority in the said meeting decided as follows : *"The Authority decided that a joint site inspection and survey along with surveyor of DSLR will be conducted on 10/01/2018 at 10.30 am at the site and the same has been intimated during the meeting to the advocate of the complainant Mr. Nandalal Khemkha. The representative of the DSLR present during the meeting has noted and agreed for the date and time and hence, no further notice will be issued for the site inspection".*

AND WHEREAS, in terms of decision taken in the 166th GCZMA held on 27/12/2017 inspection was fixed on 13/03/2018. The inspection although was carried out, there was not sufficient time for mapping of structures/encroachments. Hence, mapping was fixed on 27/03/2018, however, the same could not be done as the respondents objected to the survey. The above facts pertaining to in-complete mapping was communicated by office of DSLR to GCZMA vide letter dated 04/04/2018.

211

AND WHEREAS, said Application no. 88/2016 came up for hearing on 06/07/2018. The Hon'ble NGT, Pune vide order dated 06/07/2018 interalia directed as follows *"let the survey and mapping work be taken up on 18th -19th July, 2018. The respondent No.1 shall ensure that Notices are issued to all the parties which include the applicant and the respondent Nos.2 to 5 of the date and time of the survey work. They shall also inform of this to the District Magistrate and the Superintendent of Police, North Goa to facilitate action on their part as directed by us. GCZMA shall file report of the survey and mapping work on the next date. They are also at liberty to take appropriate action for removal of the encroachments in accordance with law."*

AND WHEREAS, in this regard, the GCZMA interms of order dated 06/07/2018 passed by Hon'ble NGT, Pune in the matter of Original Application no.88/2016 (WZ) conducted a site inspection/mapping of structures at site on 18/07/2018 and 19/07/2018 respectively. The office of DSLR vide letter dated 31/07/2018 received on 02/08/2018 have forwarded mapped survey plan.

AND WHEREAS, the matter was placed for personal hearing in the 181st GCZMA meeting held on 14/08/2018. In the said meeting it was decided that "*The Authority after hearing both the parties and taking into considering the oral submissions made by the parties . directed the complainant as well as respondent to collect the necessary copies of any documents or plans from the office of the GCZMA and further decided to hear both the parties on 31/08/2018. Personal hearing notices were waived off by the complainants as well as the respondents*".

AND WHEREAS, the matter was finally heard in the 183rd GCZMA meeting held on 31/08/2018. The proceedings in the matter in 183rd GCZMA meeting held on 31/08/2018 can be seen as follows:- "*The Complainant alongwith his advocate Wilson Braganza was present to defend his matter. Advocate Pankaj Verenkar appeared on behalf of respondents Hanumant Kandolkar, Deepak Kandolkar and Ramesh Kandolkar. Advocate Nitin Sawant appeared on behalf of respondent Nitin Kandolkar.*

The complainant pointed out the plans depicting that the structures (A, B, C and D) as per DSLR plan dated 02/08/2018 are new and encroaching into property of the complainant. He further produced the photographs showing ongoing construction at site during mapping and site inspection.The complainant referred to letter dated 27/12/2016 and photographs annexed therein. The complainant referred to the photographs that 1st floor is completed by the respondent and 2nd floor construction is in progress. With respect to structure D the said structure is covered with Zinc sheet. The said structure is G+1 and used for commercial activity. The compound wall is encroaching property of the complainant and public road.

212

The advocate on behalf of respondent interalia submitted with respect to structures (A, B and C) structure C belongs to Hanumant Kandolkar and the said structure is pre-1991. The advocate referred to House tax certificate and village Panchayat letter. He further stated that no reconstruction has been carried out and admittedly repair of roof has been carried out without GCZMA permission. With respect to structure A and B belongs to Deepak Kandolkar and Ramesh Kandolkar referred to judgement passed by Hon'ble high Court of Bombay at Goa in favour of the respondent. The respondents placed reliance upon house tax receipts.

The authority noted that the existing structures in the Survey no.136/13 and 136/16 of village Candolim are in variance with structures shown in of DSLR plan. The respondents were asked to explain this variance by way of approved plan or permission which the respondents could't explain."

AND WHEREAS, in the 183rd GCZMA meeting held on 31/08/2018 the authority meeting after discussion and deliberation decided as follows:- *"The authority noted that pursuant to order dated 06/07/2018 a detailed mapping of structures is carried out by DSLR. The structures belonging to respondents are clearly identified with letters A, B, C, D respectively in the survey plan prepared by DSLR. The authority heard all the parties and perused all the documents on record filed by the complainant and individual respondent. The authority noted that the house tax receipts produced by the respondents cannot be construed as justification for extension, re-construction and construction of new floor on the existing structures without necessary permission. The Authority resolved the following with regard to individual structures belonging to the respondents:*

D) With regard to structure D belonging to Mr. Nitin Kandolkar in 136/16 of village Candolim, the authority observed that there exists at site a structure with Compound wall, stair case and temporary structures extending in Syno.136/14 of village Candolim belonging to complainant. Even considering the case that the structure may have been altered to its present state prior to 1991, it is beyond doubt that Compound wall, stair case, two temporary structures in Syn.136/16 and temporary structures extending from Syno.136/16 to Syno.136/14 has been constructed by respondent without any permission. The authority decided to issue order to demolish the Compound wall, stair case and temporary structures in Sy Nos 136/14 and 136/16 of village Candolim belonging to the respondent."

A copy of the 183rd GCZMA meeting held on 31/08/2018 is annexed hereto and marked as Annexure "A".

213

NOW THEREFORE, the GCZMA in exercise of the powers conferred under Section 5 of the Environment (Protection) Act, 1986 (Central Act 29 of 1986) read with sub-rule (3) (a) of Rule 4 of the Environment (Protection) Rules 1986, and read with power vested with the GCZMA vide Order S.O. 3324 (E) dated 26/10/2016 issued by the Ministry of Environment & Forests, Government of India, hereby directs **Mr. Nitin Sadanand Kandolkar** to demolish the Compound wall, stair case and temporary structures as indentified in the DSLR plan (attached herewith) in survey nos. 136/14, 136/16 of Candolim Village Bardez Taluka as depicted in the DSLR Plan (Attached herewith) in terms of decision taken in the **183rd GCZMA meeting held on 31/08/2018** and the land to be restored to its original condition, within 30 days from the date of receipt of this Order. The Dy. Collector & S.D.O Bardez, Mapusa, to verify if the structures as referred above located in the property bearing Survey nos. 136/14, 136/16 of Candolim Village Bardez-Goa is demolished. In an event the same is not demolished / removed as per these directives, than the Deputy Collector & S.D.O of Bardez, Mapusa shall demolish the structure as referred above and recover the expenses incurred from **Mr. Nitin Sadanand Kandolkar** as the arrears of land revenue. Further, **Mr. Nitin Sadanand Kandolkar** is required to submit a compliance report in respect of compliance of afore stated directions to the GCZMA within next 3 days of expiry of the aforementioned 30 days time period. The proceedings are disposed off accordingly.

For and on behalf of the
Goa Coastal Zone Management Authority

(Ravi Jha, IAS)
Member Secretary (GCZMA)

(Encl as above)

To,
Mr. Nitin Sadanand Kandolkar, R/o. H.No. 460 Vaddi, Candolim, Bardez, Goa.

Copy to:

1. **The Collector & District Magistrate (North), office of Collector (North), Collectorate building, Panaji-Goa...** *for information and necessary action.*

2. **The Deputy Collector & S.D.O of Bardez having office at Mapusa-Goa**...*who is required to enforce the directions in case of failure on the part of violator and submit a compliance report accordingly.*

214

3. **The Secretary, Village Panchayat of Candolim having office at Candolim, Bardez-Goa**... *who is required to assist the Deputy Collector and S.D.O of Bardez-Mapusa in complying with abovementioned directions.*

4. **Mr. Nandlal Khemka, A-6, Klindi, New Delhi, 110065**... *for information.*

1. **Mr. Thomas Mathew, R/o. 10th Main, 11th Cross, Maruti Nagar, Malesh Palaya, New Tipparsdra Post, Bangalore 75.** ... *for information .*

5. **The Scientific Assistant, GCZMA**... *to upload copy of this order on GCZMA website immediately.*

Annexure D colly.

215

Item No. 06

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
(Through Video Conferencing)

Appeal No. 77/2018 (WZ)

(M.A. No. 167/2018 & I.A. No. 14/2019)

WITH

Caveat Application No. 09/2018 (WZ)

Nitin S. Kandolkar — Appellant(s)

Versus

Goa Coastal Zone Management Authority & Ors. — Respondent(s)

Date of hearing: 29.01.2020

CORAM : HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. SIDDHANTA DAS, EXPERT MEMBER

For Appellant (s): Mr. Ivo D'Costa, and Mr. Shivshankar Swaminathan, Advocates

For Respondent (s): Mrs. Fawia M. Mesquita, Advocate for Respondent Nos. 1
Mr. J.E. Coelho Perira, Senior Advocate along with Mr. V. Korgaonkar, Advocates for Respondent No. 3.

ORDER

1. This Appeal is directed against order dated 05.10.2018 passed by the Goa Coastal Zone Management Authority (GCZMA) directing demolition of a compound wall and stair case raised by the Appellant on Survey no. 136/16 at Wadi, Candolim, Bardez-Goa.

2. The primary contention of the learned counsel for the Appellant is that although the compound wall did encroach upon the prohibited

216

area, the stair-case did not as it was a pre-existing structure having been constructed prior to the year 1991, i.e., before the CRZ notification, 2011 was notified.

3. The relevant portion of the impugned order relied upon by the Appellant reads as follows;

> "D) ***with regard to structure D belonging to Mr. Nitin Kandolkar in 136/16 of village Candolim, the authority observed that there exists at site a structure with compound wall, stair case and temporary structures extending in Syno. 136/14 of village Candolim belonging to complainant. Even considering the case that the structure may have been altered to its present state prior to 1991, it is beyond doubt that compound wall, stair case, two temporary structures in Syn. 136/16 and temporary structures extending from Syno. 136/16 to Syno. 136/14 has been constructed by respondent without any permission. The authority decided to issue order to demolish the compound wall, stair case and temporary structures in Sy Nos 136/14 and 136/15 of village Candolim belonging to the respondent."***

4. We have gone through the pleadings and have heard the learned counsel for the Appellant. The portion of the order extracted above, in our considered opinion, does not in any manner indicate that the stair case was constructed prior to the year 1991 but rather reflects to the contrary as would be evident from the words appearing in the order.

5. A perusal of the impugned order reveals that the GCZMA had undertaken various exercises before arriving at the impugned decision. DSLR had been directed to carryout survey of the entire

property in question in order to verify the encroachments, if any, and to submit a super-imposed plan to the authority. The report filed by the DSLR as a consequence was objected to by the complainant on the ground that the survey was carried out in his absence. Thus, a second survey was conducted in the presence of the parties. When this was also objected to, this time by the Respondents, i.e., the present Appellant, a third survey was undertaken by the DSLR, the report in respect of which was finally considered in the 183rd meeting of the GCZMA held on 31.8.2018. It may also be relevant to note that the GCZMA had held several proceedings during the intervening period when both the parties had been heard before the final hearing that was held on 31.8.2018.

6. During the course of the hearing, the Appellant had urged before the Authority that three structures referred to as A, B and C were pre 1991 structures. Re-constructions had been carried out to those and house taxes paid. We need not deal with each of the structures but suffice it to note that it was the case of the Appellant before the Authority that all the four structures, the fourth of which was identified as 'D' which included a compound wall, stair case and temporary structures in Survey no. 136/14 of village Candolim, were legitimate. However, the Auhtority had held that even if the structures had been altered to its present state prior to the year 1991, there was no doubt that the compound wall, stair case, two temporary structures in survey no. 136/16 and temporary structures extending from Survey no. 136/16 to Survey no. 136/14 had been constructed by the appellant without any permission.

218

7. Thus, it was only after undertaking an elaborate exercise and detailed finding that the order impugned in the present Appeal was passed by the Authority by which the Appellant had been directed to demolish the compound wall, stair case and temporary structures as identified in the DSLR plan in Survey no. 136/14, 136/16 of Wadi, Candolim, Bardez-Goa, taluka depicted in the DSLR plan. The very order impugned in the Appeal makes it evident that all relevant factors had been taken into consideration by the GCZMA, before passing the order.

8. We, therefore, do not find any reason as to why we should interfere with the order.

9. In the result, the Appeal stands dismissed along with the connected M.A., I.A. and other Applications.

10. The order, however, shall not be executed for a period of 15 days from hence.

11. No order as to cost.

S.P. Wangdi, JM

Siddhanta Das, EM

29th January, 2020
Appeal No. 77/2018 (WZ)
Pk