

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

O.A. No.102/2019(WZ)

Colva Civil & Consumer Forum
Through its Secretary
H.No.257/1, Bagdem,
Ward 3 Colva, Salcete - Goa

.....Appellant

V/S

State of Goa
Through its Chief Secretary
Secretariat, Porvorim Goa
& 3 others

..... Respondent

**ENQUIRY REPORT PURSUANT TO ORDER
DATED 07.09.2022 ISSUED BY GOVERNMENT
OF GOA ON ACCOUNT OF DIRECTIONS
ISSUED IN O.A.NO.102/2019(WZ) NGT, PUNE**

**BRIEF FACTS PERTAINING TO THE HOTEL
SILVER SANDS**

- A. The genesis of the case in hand is that a survey was carried out by the Land Survey Department, identifying various structures within the No development Zone (NDZ) area on the basis of directions given by the Hon'ble High Court of Bombay at Goa vide its order dated 10.07.2003 in Writ Petition No. 150/98, whereby the local bodies were called upon to carry out survey of the areas within the NDZ, identify all structures existing

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therein and then to take appropriate action in respect of those structures which had been constructed after 19.02.1991, when the CRZ Notification of 1991 came into force. That one such structure was that of *Hotel Silver Sands*.

- B. That since the local bodies did not have the requisite expertise to demarcate the NDZ line, the Directorate of Settlement and Land Records (DSLRL) was entrusted with the said task. Resultantly, the village of Colva was demarcated on 31.11.2006 wherein the offending structure of Hotel Silver Sands was also identified of being within the NDZ area.
- C. Thereafter, the Hon'ble High Court vide its order 12.01.2015, in Writ Petition No. 2/2006, directed the Village Panchayat of Colva to furnish material on record before the Goa Coastal Zone Management Authority (GCZMA) to suggest that the structures were not illegal and further directed that the said Authority would examine the material after hearing the parties.
- D. The primary concern of Writ Petition No. 2/2006 was the illegal constructions in NDZ areas in the entire State of Goa and there was a voluminous task to be carried out by the GCZMA with respect to the same. Therefore, a special 3 Member Committee was constituted which was headed by a retired Judge of District Court. This 3 Member Committee were to accord an opportunity of

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hearing to the owner of the offending structures and allow them to place relevant documents on record and only then were they to consider the same and give their finding. Once, the 3 Members Committee had given its findings, the GCZMA had to take the final call with respect to the appropriate actions to be taken, if any.

- E. This report of the 3 Member Committee made certain crucial findings, and the same was considered by the GCZZMA for deliberations and after having heard the parties at length, the GCZMA in its **187th meeting** held on **30.10.2018** resolved to pass a demolition order against all the structures located in Survey No. 24/2, 24/3, 24/11 and 24/12 of Village Colva and direct Hotel Silver Sands to stop all commercial activity being carried out in Survey No. 24/2, 24/3, 24/11 and 24/12 with immediate effect.
- F. Pursuant to the aforesaid decision, the GCZMA, under Section 5 of the Environment Protection Act, 1986, passed an **order dated 05.12.2018** and directed Hotel Silver Sands to demolish all structures existing in Survey No. 24/2, 24/3, 24/11 and 24/12 of Village Colva and to also stop all commercial activity being carried out in Survey No. 24/2, 24/3, 24/11 and 24/12 with immediate effect and to restore the land to its original condition, within 30 days from the date of receipt of the said order.

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- G. Hotel Silver Sands challenged the aforesaid order dated 05.12.2018 before the Hon'ble NGT vide Appeal No. 79/2018(WZ) and the said Appeal was dismissed vide an order dated 03.01.2019, observing that there was no interference called for in the impugned order since the Appellant had failed to establish that the findings arrived at by the Ld. Authority were perverse to the material on record, in any manner.
- H. Thereafter, Hotel Silver Sands challenged the aforesaid NGT order dated 03.01.2019 passed in Appeal No. 79/2018(WZ), before the Hon'ble Supreme Court vide a Civil Appeal No. 216/2019, which was dismissed vide an order dated 18.01.2019.
- I. The owner of the offending structure, i.e. Hotel Silver Sands thereafter filed an application before the GCZMA for review of the decision taken by the GCZMA in its meeting held on 30.10.2018 and subsequently also sent a reminder dated 29.07.2019.
- J. That in the meantime the erstwhile owners of the site in question i.e. the predecessors of Hotel Silver Sands, one M/S Bencomer Hotel (Goa) Pvt. Ltd., filed a Writ Petition No. 171/2017 before the Hon'ble High Court of Bombay against the demolition order dated 05.12.2018 by concealing material facts regarding the proceedings before the Hon'ble NGT and the Hon'ble Supreme Court.

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That vide its order dated 06.02.2019 the Hon'ble High Court of Bombay in Writ Petition No. 171/2017 granted an ad-interim relief to the Petitioners and in light of the said ad-interim relief, demolition could not be carried out. Thereafter on 05.04.2019 the Hon'ble High Court of Bombay in Writ Petition No. 171/2017 issued a clarificatory order stating that it would be open to the GCZMA to take action for stoppage of commercial activities, if any, being conducted in the subject premises. That the Writ Petition No. 171/2017 was eventually dismissed on 18.07.2019.

- K. That, after the liberty granted by the Hon'ble High Court of Bombay at Goa order dated 05.04.2019 in Writ Petition No. 171/2017, GCZMA issued directions in April 2019 to Hotel Silver Sands management to stop all commercial activities with immediate effect and issued another reminder order dated 15.05.2019 upon which no commercial activities were being carried out in the said premises.
- L. That, in abuse of the process of law, and with the sole intention to delay the demolition, Hotel Silver sands filed a Review Application No. 01/2019 (WZ) before the Hon'ble NGT and the same was dismissed vide an order dated 01.05.2019.
- M. With respect to the Review Application filed by Hotel Silver Sands before the GCZMA, the

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GCZMA issued a notice vide letter dated 29.07.2019 and asked the Applicant to appear before the Authority for a personal hearing on 07.08.2019. The said review proceedings were eventually dismissed on 21.10.2021.

- N. That against this GCZMA order dated 21.10.2021, Hotel Silver Sands filed a writ petition before the Hon'ble High Court of Bombay at Goa and vide order dated 24.11.2021, the Hon'ble High Court was pleased to issue notice and stay of the GCZMA order dated 21.10.2021 due to which the demolition action could not be carried out by GCZMA. The said writ petition was finally dismissed by the Hon'ble High Court on 02.03.2022.
- O. After the High Court order dated 02.03.2022, GCZMA wrote a letter dated 27.03.2022 to Dy. Collector and S.D.O. of Salcete directing them to demolish the illegal structure before 07.04.2022. The Dy. Collector of Salcete who is the In-Charge of Demolition Squad had also issued an order on 29.03.2022 for demolition work to be carried out on 07.04.2022, but the PWD Goa was not in a position to carry out the demolition because the structure in question was quite enormous and demolition of the same required a different methodology.

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P. The tentative cost for demolition was estimated to be Rs.13,89,830/-. Since the costs involved were quite immense, some amount of time was consumed on who would bear the expenses of the demolition activity and financial clearance etc. In the meanwhile, there was monsoon season in Goa from May to September also which delayed the demolition activity and finally the Authority ensured that the demolition work was carried out by the owner of the offending structure himself completely by 30.09.2022.

Q. A perusal of this Hon'ble Tribunal's order dated 07.09.2022 especially paras 20-21 shows that the tribunal was mainly concerned with two issues namely:

- a) *why the GCZMA even considered the review petition filed by the owner of the Hotel Silver Sands when the GCZMA demolition order dated 05.12.2018 was upheld by the Hon'ble High Court and the Hon'ble Supreme Court of India; and*
- b) *that the owner of the hotel had continued to enjoy benefits of the property even after the Hon'ble Supreme Court order dt 18.01.2019 till 21.10.2021 and thereafter also as the structure was not demolished.*

Answered

ACTION OF THE AUTHORITY/GCZMA

- R. The owner of the offending structure, i.e., Hotel Silver Sands, had harped upon the applicability of a review by stating that there was a procedural lapse on the part of the Authority. Even though the Authority did consider the said review application to some extent, it also simultaneously ensured that the hotel premises were sealed and that no commercial activity could take place therein. There were divergent views of the members of the Authority wherein some were of the opinion that the application for review was tenable while others were of the opinion that it was not, and hence the opinion of the Ld. Adv. General was sought regarding the said issue as to whether the principles of res judicata and the doctrine of merger would apply in relation to the review application filed by the owner of the Hotel Silver Sands.
- S. The Ld. Advocate General gave a detailed legal opinion dated 16.07.2020 on these two issues stating that the Principle of Res Judicata shall not apply, if the order is passed in contravention of the provisions of law or if the order is a nullity or void ab initio. One has to therefore find out and apply the principles in the instant case, as to whether the earlier order passed by the GCZMA is contrary to law or is a nullity. If it is contrary

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to law or if it is a nullity, the Principle of Res Judicata will not apply. In case, the order does not fall in the category of nullities or be contrary to law, the Principle of Res Judicata shall apply. Insofar as the case of Doctrine of Merger is concerned, the jurisdiction and nullity goes to the root of the matter. If the order is without jurisdiction or if the same is a nullity in the eyes of law, such order cannot be allowed to stand by applying the Doctrine of Merger. Accordingly, the Id. AG had advised GCZMA to find out, whether the review application filed by the noticee falls in any of the parameters above. If the order is without jurisdiction or a nullity, Doctrine of Merger would not apply. If the order is not without jurisdiction or nullity, Doctrine of Merger would apply.

- T. In the normal course as per CRZ Notification of 1991, the burden of proof is not on the person who asserts as which is otherwise in Civil Law, but on the owner of the offending structure. Some documentary evidence which was never considered in the past was presented by the owner of the structure in the review petition and thus on the principle of preponderance of probability some of Authority members were of the view that the review application is

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admissible. This aspect of the review application being heard and tried by the Authority was also brought to the notice of the Hon'ble NGT, during the course of the hearing held on 18.03.2020 and the Hon'ble NGT had observed that since proceedings of review is underway before the GCZMA, in respect of the matter, it would be improper to proceed further until such proceedings culminate. A copy of the NGT order dated 18.03.2020 is marked as **Annexure-A**.

U. The undersigned is of the view that the act of rehearing the application of procedural review by issuing notice was centered on the principles of natural justice. The hearing insofar as this matter is concerned on the point of procedural review was taken up on 12 different occasions spanning from the period 07.08.2019 to 21.10.2021. In between the pandemic of Covid-19 also crept which led to considerable delay in deciding the application for review.

V. Further, even this decision of the GCZMA dated 21.10.2021 in review application filed by the owner of offending structure was challenged before the Hon'ble High Court of Bombay at Goa in W.P. 406/2021 wherein the Hon'ble High Court had granted stay on the directions to demolish the offending structures vide order

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dated 24.11.2021 which was dismissed only on 02.03.2022.

- W. Had there been any favoritism bestowed on the owner of Hotel Silver Sands then the Authority members would not have closed down the commercial operations in May 2019 itself and finally would not have arrived at a decision to demolish the offending structures on 21.10.2021.

CONCLUSION

- X. After having gone through the records and having considered the manner in which the proceedings have been conducted, in my opinion the members of the GCZMA have acted in good faith by applying the principles of equity, good conscience and justice. As of now the offending structure has also been razed to the ground by the owners by 30.09.2022 and even though there was delay in conducting the proceedings, it may be noted that in the ensuing process of deciding the application on procedural review, the Authority had ensured sealing of the premises in May 2019 itself (immediately after the High Court has permitted GCZMA to stop commercial activities from the hotel premises in April 2019) and thereby restricted the owner of the offending structure from carrying out any commercial

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activities. Thus, the owner of the offending structure was not allowed to generate any economic benefits during the pendency of the proceedings of procedural review.

Y. Considering the fact that the owner of the offending structure had not succeeded in the matter before the Apex Court, the GCZMA whilst considering the review application on the basis of the opinion given by the Ld Adv. General, indeed should have fast-tracked the procedure of disposing of the review. Having regard to functioning of the GCZMA, the undersigned, in order to streamline the functioning of GCZMA, has issued an order dated 18.04.2022 which includes the following directions:

- i. The GCZMA shall initiate necessary proceedings on the following day of the receipt of complaint or order received from any court
- ii. The matters referred to by the NGT/the High Court/the Supreme Court shall be given priority and be decided in two months.
- iii. The GCZMA may hear the court referred cases at least once in a week so that it would not be lost in the oblivion.

Respectful

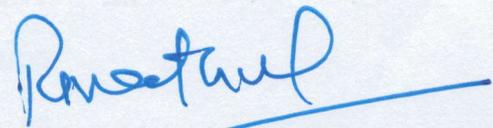
- iv. For regular matters also the GCZMA shall conduct and conclude the proceedings within three months.
- v. Portal may be developed on the website of the GCZMA for systematic monitoring and disposal of the cases as it is done by various courts.
- vi. All the cases undertaken by the GCZMA shall be given unique ID number for monitoring at any given point of time and easy accessibility to public at large.
- vii. The Member Secretary shall assess the manpower, software and hardware requirements, and put it into the place for better efficiency of the GCZMA and performance.
- viii. All the communications and directions issued to line Departments for necessary actions, must be sent online also for time stamping and seamless communications.
- ix. The MS GCZMA shall nominate one counsel in the Department who will work as nodal officer and responsible for all coordination and compliances of the directions issued by the Courts to the GCZMA.
- x. Review of GCZMA referred cases periodically by Collectors and Head of Departments and sending their reports on

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monthly basis to the GCZMA, within 30 days of receipt of the cases.

Z. That having regard to the above, the undersigned submits that while the delay in deciding the matter and in carrying out the demolition is regretted, it is humbly submitted that the delay was not intentional and there was no malafide on part of the officials of the GCZMA and the undersigned has taken cognizance of the delay that has occurred in the present case and has issued suitable remedial actions to ensure that the GCZMA is more active in performing their duties in future and ensure that matters are disposed off at the earliest and orders are also timely implemented.

Submitted in compliance to the directions issued by the Hon'ble NGT in O.A. No.102/2019 (WZ) Pune.



Puneet Kumar Goel, IAS
Chief Secretary Goa

Item No. 03

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

Original Application No.
102/2019 (WZ)

The Colva Civic and Consumer Forum Applicant(s)

Versus

State of Goa &Ors. Respondent(s)

Date of hearing: 18.03.2020

**CORAM : HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. S. S. GARBYAL, EXPERT MEMBER
HON'BLE MR. SIDDHANTA DAS, EXPERT MEMBER**

For Appellant(s): Mrs. Meera Gopal, Advocate
For Respondent (s): Mr. Saurabh Kulkarni, Mr. Prashant
Bhat, Advocates for Hotel Silver
Sands.
Mr. Anuj Jain, Advocate for GCZMA

ORDER

1. Mrs Meera Gopal, Ld. Counsel appearing for the Applicant submits that affidavit of service has been filed in respect of all the respondents.
2. Let the affidavit be taken on record. Reply on behalf of respondent No. 3 has also been filed which reveals that after the orders were passed by the Hon'ble Supreme Court upholding the decision of the Tribunal dismissing the appeal against the order of the GCZMA, a fresh proceeding was initiated based on an application filed by the respondent no.3.
3. It appears that a ground truthing exercise has been initiated and two inspections of the structures of respondent

- no.3 have been undertaken on 31.12.2019 and 09.01.2020 report in respect of which is stated to be awaited.
4. Mrs. Meera Gopal, Ld Counsel for the Applicant submits that the exercise being undertaken by the GCZMA is beyond its jurisdiction as it does not possess any power of review except on the ground of procedural error.
 5. Without making any observation on this, since a proceeding is underway before the GCZMA in respect of the matter, it would be improper for us at this stage to proceed further until such proceeding culminates.
 6. In view of this, the case stands adjourned to 05th May, 2020 before which we expect GCZMA to complete the proceedings report filed before us.

S. P. Wangdi, JM

Sheo Kumar Singh, JM

Dr.S.S.Garbyal, EM

Siddhanta Das, EM

18th March, 2020
Original Application No.
102/2019 (WZ)
PS

