

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH AT PUNE
APPEAL NO. 59 OF 2018

IN THE MATTER OF:

M/S Elite Builders

... Appellant

Versus

Goa Coastal Zone Management Authority & Ors

... Respondents

NDOH: 22.02.2023

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FILED ON: 21.02.2023

FILED BY

[SHIRIN KHAJURIA]

Advocate for Respondent No.01

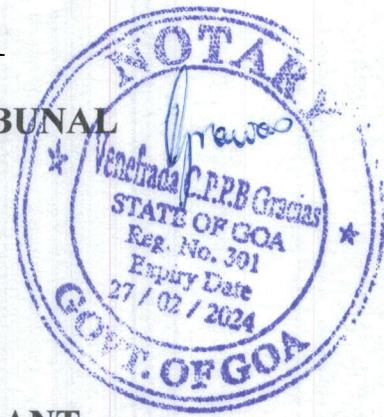
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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH AT PUNE
APPEAL NO. 59 OF 2018



IN THE MATTER OF:

M/S ELITE BUILDERS

... APPELLANT

VERSUS

GOA COASTAL ZONE MANAGEMENT

AUTHORITY & ORS.

... RESPONDENTS

**SHORT COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT
NO.1, GOA COASTAL ZONE MANAGEMENT AUTHORITY**

I, Dr. Geeta S. Nagvenkar, Member Secretary, Goa Coastal Zone Management Authority, having office at 4th Floor, Dempo Towers, Patto, Panaji, Goa, Respondent No.1, do hereby solemnly affirm and declare as under:

- A. That in my official capacity as stated above, I am well conversant with the facts and circumstances of this case and hence, competent and authorized to swear the present affidavit on behalf of the Respondent No.1, Goa Coastal Zone Management Authority. I say that I have taken charge of the office of the GCZMA on the 22/12/2022.
- B. I state that each and every averment and submissions, allegations and contentions raised in the Appeal are denied, being false, incorrect and/or without substance, save and except those which are specifically admitted hereinafter. Nothing may be taken as admitted for non-traversal.

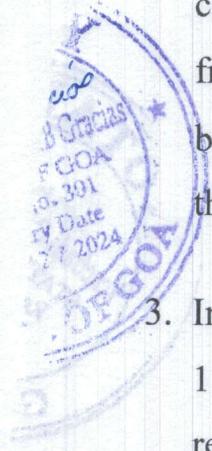
C. That a short reply is being filed to the Appeal and the answering respondent seeks leave to file a parawise reply at a later stage, if deemed necessary.



PRELIMINARY SUBMISSIONS AND OBJECTIONS:

1. It is submitted that the impugned decision taken in 177th Meeting of GCZMA dated 26.06.2018 followed by the impugned demolition order dated 09.07.2018 passed by the Answering Respondent Authority in respect of construction of a mega project known as 'Nazri Beach Resort' in property bearing survey nos. 319/2, 3, 5, 7 and 12, is wholly in accordance with law, based upon the existing survey map of that time as mentioned therein, and the documents produced by the Appellant. It is submitted that the disputed properties were in the CRZ area, within 500 mts of HTL, and the Appellant has failed to provide sufficient proof that the large, disputed structures existed prior to 1991 in the CRZ, or that required prior permissions were obtained for construction in an eco-sensitive zone, and that the construction of the commercial resort is otherwise legal. Hence, there is violation of the CRZ Notification 2011 and the present Appeal is devoid of merits and liable to be dismissed.
2. It is pertinent to mention at the outset that the Appellant has filed certain new documents/additional documents before this Hon'ble Tribunal including a purported construction permission dated 11.4.1989 @ page 50, granted to the erstwhile owners, which documents were not produced before the Answering Respondent during the hearings, despite giving ample opportunities to the Appellant before the impugned order was passed. It is submitted that these documents,

placed on record without any permission from this Hon'ble Tribunal, cannot form part of the present Appeal and are liable to be struck off from the record. Further, since the original document was not placed before the Answering Respondent, it cannot confirm the authenticity of these documents.



3. In any case, even as per the alleged permission for construction dated 11.4.1989 granted to the erstwhile owners, permission was only in respect of survey No. 319/5 and 12, and there was no permission granted to build on Survey Nos. 319/2 or 319/3 or 319/7. Besides the permission granted for the other two parts of the survey i.e 319/5 and 319/12, was non-transferable and only for a period of 3 years. It is important to note that the Appellant herein purchased the larger, disputed property only in 2007-08 and admittedly some construction has been done by it thereafter and hence, the permission of 1989 is of no significance.
4. That the Appellant in para 6 of the Appeal have contended that the partners of the Appellant purchased the disputed properties by diverse Sale Deeds including registered Sale Deed dated 15.02.2007 and 11.09.2007 from the erstwhile owners. However, it is pertinent to note that the aforesaid alleged sale deeds have not been placed on record by the Appellant which would have clearly proved the extent, if any, of the constructed structure. Non-production of the same leads to an adverse inference that no such constructed property existed as on 19.2.1991 even in the two survey numbers, and the Appellant has illegally constructed the disputed property, without any permissions.
5. It is further stated that the documents annexed as **Exhibit-D** colly of year 2008 and subsequent period, were also not placed on record

before the Answering Respondent at the time of passing of the impugned order. As such these documents do not form part of the record and cannot be taken into consideration while deciding whether or not the impugned order was rightly passed by the Answering Respondent. It is also pertinent to note that these documents have been obtained based on the fabricated documents dated 1995 and 2006, as stated hereinafter. Hence, it is prayed that these documents may not be considered by this Hon'ble Tribunal while deciding the present Appeal.



6. That the letters dated 17.05.2006 bearing reference no. GCZMA/S/12/406 (@ pg 55 *Exhibit-C of the Appeal*), relied upon by the Appellant, which is purported to be issued by the Answering Authority, and documents bearing No. GSCCE/GEN/95/2501 and GSCCE/GEN/95/2525 both dated 27.06.1995 (@ pg. 53 and 54, *Exhibit-B of the Appeal*) relied upon by the Appellant to submit that the property falls just beyond 500 mts from the HTL and is not in the CRZ zone, were fraudulently generated by the Appellants, and against these the Answering Respondent had preferred a complaint dated 31.12.2009 (@pg. 99, *Exhibit-H of the Appeal*) to the Police Inspector, CID, CB, Dona Paula, Goa. Resultantly, an FIR bearing No. 29/2010 dated 26.07.2010 (@pg. 101, *Exhibit-H of the Appeal*) was lodged under Sections 420, 468 and 471 of the Indian Penal Code, 1860, wherein charge sheet has also been filed against one of the partners of the Appellant and Trial is complete. The said case bearing IPC/224/2016 is pending for final hearing before the Ld. Judicial Magistrate First Class, Mapusa as also stated in Appeal at para 31.
7. It is important to note that in the apparently forged letters of 1995 and 2006 stating that the properties mentioned therein are beyond 500 mts. of HTL, there is no statement therein as to when the survey was carried

out nor is a survey map relied upon attached thereto. Hence, on the face of it, these documents cannot be relied upon.

8. It is stated that these forged letters of 1995 and 2006 allegedly written to the erstwhile owners have formed the basis of all the subsequent permissions granted by the various authorities for the illegal project 'Nazri Resort' of the Appellant, which also hence, cannot be relied upon.
9. **The brief facts of the case are** that one Mr. Rosy P. Dourado had filed a Complaint dated 05.01.2009 before the Answering Respondent and District Collector (North) stating that the Appellant Partnership Firm through its partner Mr. Michael Lobo and Mr. Franky Viegas are illegally constructing a hotel in the present disputed Survey No. 319/2, 3, 4, 5, & 12 of Calangute Village and also encroached in her property. It was further alleged that the construction was being carried out within CRZ Area.
10. In the meanwhile, the Deputy Collector & SDO (Bardez) issued a Stop Work Order dated 16.12.2008 against the construction being carried out by the Appellant, which was received by the Answering Respondent on 06.01.2009. Thereafter, the Answering Respondent issued a Show Cause Notice to the Appellant through its partners Mr. Michael Lobo and a copy of the said Notice was also sent to the Additional Collector (North) to investigate the matter and conduct a summary inquiry.
11. The Appellant filed a detailed reply to the GCZMA, where they had enclosed a purported letter said to have been issued by the Answering Respondent bearing reference no. GCZMA/S/12/406 dated 17.05.2006 which simply state that the disputed property bearing Survey No. 319/2, 3, 5 & 12 of Calangute Village are located just beyond 500

meters of the High-Tide-Line (HTL) (Ref: @pg 55 Exhibit-C of the Appeal). This letter further states that any development proposed on the said plot does not attract the provisions of CRZ Notification, 1991. The Appellant had also relied upon two letters dated 27/06/1995 of GSCCE, which also blandly stated that the said disputed property was beyond 500 meters of HTL. However, it is reiterated that strangely neither of these letters refer to any survey map or date of physical survey or annex a map to arrive at this conclusion. It is the contention of the answering respondent that the same are forged and fabricated also because no such record existed in the office of the Respondent. As stated in the preceding para 5, the Respondent consequently filed a criminal complaint, which was converted into an FIR and now the matter is fixed for final hearing, after completion of trial.

12. As stated in the complaint by GCZMA to the Police @ page 99-100, para 3-4, as per the old maps used by GSCCE till 1991 and later by the GCZMA till 2006, the properties were in fact found to be between 200-500 mts of HTL and not beyond 500 mts of HTL as stated in the forged letters.
13. It is also pertinent to mention that one Mr. Raj Kishan D. Khosle, resident of the neighboring Beira-Mar Residential Complex had also filed a complaint against the illegal structure of the Appellant before the Answering Respondent and various other Authorities and thereafter approached the Hon'ble High Court of Bombay at Goa, by filing Writ Petition No. 391 of 2009. However due to the demise of Mr. Khosle, the said proceedings were dropped vide Order dated 30.08.2010.
14. Later, the Answering Respondent again received a complaint dated 23.09.2015 from one Mr. Kashinath Shetye & Ors, Respondent Nos. 2




herein against the alleged illegal construction of the Appellant's project 'Nazri Beach Resort' at Calangute Village, Bardez-Goa.

15. Thereafter the Answering Respondent issued a Show Cause Notice dated 11.11.2015 (Ref Pg. 93 of the Petition) wherein the Appellant was informed about the complaint filed by the Respondent No.2 which prima-facie showed that the alleged structure was in contravention of CRZ Notifications, 2011. The Appellant was directed to file their reply and produce necessary documents on the date of hearing on 27.11.2015.
16. While the Answering Respondent was considering the complaint against the Appellant, the Respondent No.2 preferred an Original Application bearing No. 61 of 2016 followed by a Miscellaneous Application No. 163 of 2017 before this Hon'ble Tribunal alleging that the Answering Respondent has not considered their complaint against the illegal structure of the Appellant. This Hon'ble Tribunal directed GCZMA to hear the parties on 29.11.2017.
17. In compliance of the Order of the Hon'ble Tribunal, the Respondent conducted its 164th Meeting on 29.11.2017 wherein the Appellant was represented by its partner, MLA from Calangute constituency, Mr. Michael Lobo, and the Respondent No.2 appeared personally before the Respondent Authority. Upon hearing the submissions made by the parties, the Answering Respondent decided to conduct a site inspection of the alleged structure on 12.12.2017 to find out if the property was beyond 500 mts of HTL.
18. As is evident from the site inspection report **Page 97 @ 98**, that since a physical survey could not be carried out that day, it was suggested that the available HTL line of 2005-2006, identified by National Institute of



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Oceanography (NIO), as per High Court Order in 2010, can be considered for measuring the distance from the HTL to the buildings constructed by the Appellant. Further, the work of measurement of the distance from the HTL of the alleged illegal structure was suggested to be done through the Office of the Directorate of Settlement and Land Records (DSLRL), which is the Body authorized for the purpose. It is submitted that in fact in similar case, the Hon'ble High Court has accepted the survey and mapping of HTL by NIO and of structures by DSLR. Copy of the Order of the High Court dated 16.07.2007 in Suo Moto WP NO. 2/2006 is annexed herewith as **ANNEXURE R1/1**.

19. That, on the 170th meeting held on 27.03.2018, the Respondent heard both the parties and issued necessary documents such as the site inspection report and other relevant documents to both the parties. The GCZMA sent the Site Inspection Report to the Appellant vide letter dated 04.04.2018 (*Ref: Pg. 96-98 of the Appeal*).
20. Thereafter, in the impugned 177th meeting held on 26.06.2018, the Answering Respondent heard the submissions made by the parties. The Answering Respondent has observed that the Appellant has strongly relied upon the fabricated letter dated 17.05.2006 purported to have been issued by the GCZMA in respect of which criminal case is pending. This forged document has become the basis of all the permissions issued by various authorities for the alleged property, and hence, the same also have no evidentiary value.
21. In the circumstances, since a survey had already been carried out in 2009 and mapping done by DSLR based upon the HTL marked by the NIO in 2005-06, in terms of the High Court Order, and structures

mapped by DLSR thereupon, the same was rightly relied upon by the Answering respondent.

It is clarified here that DSLR was only to do the mapping of the structures on the existing HTL line mapped by NIO in 2005-06 as per directions of High Court; the DSLR was not deciding / marking the HTL.

22. That based upon the arguments made by the parties and documents produced, the Answering Respondent vide its impugned 177th meeting followed by the **impugned order dated 09.07.2018 (@ page 106-111)** has observed that it is only the forged document which shows that the property is beyond 500 mts of HTL, and despite the Show Cause cum stop work Notice dated 06.01.2009 issued by GCZMA to stop all the construction activities in the said premises, the Appellant has still gone ahead and completed the construction. Further, the Appellant has not produced a single document before the Answering Respondent to prove that the Structure existed prior to 1991. Furthermore, the survey plan of the year 2010 (**@ref Pg. 111**) clearly shows that the structures in Survey no. 319/2, 3, 5 and 12 (shown as Building A, G+ 4 in Survey Plan) are within 500 mts of HTL and in the CRZ area. Resultantly, it is rightly held that the structure of the Appellant has been built within the CRZ area without seeking and prior permission and thus, is liable to be demolished.

23. It is submitted that the Answering Respondent gave enough opportunities to the appellant to produce documents and conducted effective hearings on 29.11.2017, 27.03.2018, 19.06.2018 and 26.06.2018.



24. It is stated that there was no demarcation of HTL done in the year 1996 under the CZMP Plan, 1996. This Plan of 1996 was implemented to distribute the villages which fell in the CRZ area into three zones, i.e., CRZ-I, II or III.
25. It is stated that the Answering Respondent is not bound to wait for the appeal period as set out in Section 16 of the NGT Act to be over.
26. It is also pertinent to mention that in paras 52 and 53 of the Appeal, the Appellant has in fact admitted that the property is on the borderline of the 500 meters HTL.
27. It is stated that the Survey Map of 1991 was superseded by the survey map of 2005-06 drawn by the NIO (*ref: order dated 16.07.2007 Annexure R-1/1*). In order to ascertain the illegal constructions carried out by the Appellant, the Respondent Authority got the structures of the Appellant plotted on the plan through DSLR. The copy of the DSLR letter dated 12.04.2018 is annexed hereto as **ANNEXURE R-1/2**. The Copy of the GCZMA letter dated 02.03.2010 is annexed hereto as **ANNEXURE R-1/3**. Hence, the Answering Respondent relied upon the same to pass the Impugned Order of demolition. Further, it was in any case for the Appellant to prove that the disputed structure existed in the year 1991 or that it was beyond 500 mts HTL, which it has failed to do and hence, the order of demolition passed since no prior permission was taken to carrying out construction within CRZ zone at the relevant time is wholly in accordance with law.
28. Accordingly, the Respondent No.1 urges that the present Appeal is without substance and may be dismissed, with a direction to the Appellant to demolish structures in survey nos. 319/2, 3, 5 and 12 in



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Date
2021

village Calangute and restore the land to its original condition as set out in the impugned order dated 09.07.2018.



[Signature]
20/02/2023

DEPONENT

MEMBER SECRETARY
GOA COASTAL ZONE MANAGEMENT AUTHORITY,
PANAJI - GOA

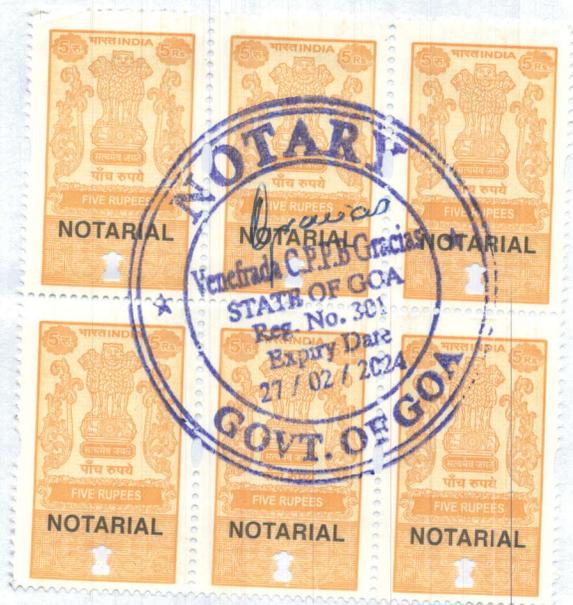
Verification:

Verified in Panaji - Goa on this 20th day of February 2023 that the contents of the above paras are true and correct to the best of my knowledge and belief, based upon official records, and nothing material has been concealed therefrom.

[Signature]
20/02/2023

DEPONENT

MEMBER SECRETARY
GOA COASTAL ZONE MANAGEMENT AUTHORITY
PANAJI - GOA



Solemnly affirmed before me
Dr. Geeta S. Nagvenkar
Who is identified before me by

_____ At Panjim - Goa

Sr. No. 038/02/2023/P

Date. 20/02/2023

[Signature]
Venefrada C.P.P.B. Gracias
Advocate & Notary Goa State

Annexure R-1/1

IN THE HIGH COURT OF BOMBAY AT GOA

SUO MOTU WRIT PETITION NO. 2 OF 2006

Versus

UNION OF INDIA THROUGH ITS
SECRETARY AND 2 ORS.,

... Respondents

Advocate Ms. Norma Alvares, Amicus Curiae.

Mr. S. S. Kantak, Advocate General with Ms. Leena Dharwadkar, Addl.
Govt. Advocate for the respondents.

Mr. C. A. Fereira, Asst. Solicitor General for the Union of India.

Coram:- R. S. MOHITE &
N. A. BRITTO, JJ.Date:- 16th July, 2007

P.C.

Perused the affidavit dated 2.7.07. By the said affidavit, we are informed that the work of identifying the High Tide Line (HTL) has been completed by the National Institute of Oceanography (NIO) in all the coastal villages, excepting in certain areas such as cliffs, promontories etc., which are inaccessible. The affidavit further states that in respect of 20 villages, in five coastal talukas, the work has been completed in all respects, including plotting and certification of maps by the NIO.

2. Though the Affidavit states that in respect of six villages such work is completed and forwarded by the GCZMA to NIO for certification, we are informed that the certification has now been done. In the circumstances, it clear that the work of survey of the structures within 200 metres of HTL in 26 villages is complete.

3. It appears that in respect of structures which are shown in the

survey maps, it will be necessary to find out whether the structures have been erected prior to 19.2.91 or have been erected thereafter. We are informed that details relating to such structures as well as the information as to whether these structures have been erected prior to 19.2.91 or thereafter, can only be furnished by the concerned Village Panchayats. The learned Advocate General states that a list of the concerned Village Panchayats in respect of all those 34 Villages will be furnished to the learned Amicus Curiae within two days. Accordingly, these Village Panchayats to be added as party respondents.

4. Leave to amend to add them as party respondents. Notices to be issued to the added respondents, returnable in four weeks. In the meanwhile, the remaining work relating to identifying of HTL and preparing the maps showing the structures within 200 metres of the HTL in respect of remaining 8 Villages to be completed expeditiously.

5. The learned Advocate General further states that the maps which are completed and which will be completed from time to time will immediately be forwarded to the concerned Panchayats with a request to furnish the details relating to the owners of the structures as well as the date when the construction permission, if any, was granted.

6. As regards the demolition of 21 structures, there is a compliance report dated 16.7.07 which is filed today and is taken on record. We have perused the same and it appears that such structures which could be demolished, have been demolished and other structures are matters of proceedings before this Court or before the Authorities. We are informed that in five such matters, an order of demolition has been set aside by this Court and the matter is pending before the Authority. We make it clear that these five cases will be added to the 188 cases referred to in the order of this Court dated 2.4.07 and they will be disposed off on merits within the time-frame of six months as specified in the said order.

7. As regards the formation of an independent authority or delegation of powers to an independent authority for inquiring into the complaints regarding CRZ violations, the learned Asst. Solicitor General states that the matter is being pursued and will continue to be pursued vigorously.

S.O. for four weeks.

R. S. MOHITE, J.

N. A. BRITTO, J.

ssm.

No. 19/DSLRL/139/CRZ- Misc Meeting/2016/30 /2449
Government of Goa
Directorate of Settlement &
Land Records, Panaji-Goa.

Annexure R -1/2

15

Dated:-12/04/2018.

Member Secretary
GCZMA
Forward No 236/L
Date 17-04-2018

To,
The Member Secretary
Goa Coastal Zone Management Authority,
C/o Department of Science, Technology and Environment,
1st floor, Pt.Deendayal Upadhyay Bhavan, Pundalik Nagar, Alto,
Porvorim, Bardez-Goa-403521.

Sub:-Site Inspection in respect of S.No. 391/2, 3, 5, 6 &12 of Calangute
Village of Bardez Taluka.

Sir,
Please find enclosed herewith true copy of report prepared vide GCZMA
Letter No.GCZMA/Bar/CAL/08-09/101/811 dated 02/03/2010 in respect of S.No.
391/2,3,5,6 &12 of Calangute Village of Bardez Taluka Pursuant to directions in
W.P. No. 391 of 2009 of Hon'ble High Court of Bombay at Goa for further
necessary action at your end.

Yours faithfully



(Domiana Nazareth)
Suptd. Of Survey & Land Records
Panaji-Goa

Encl: - As above

GOA COASTAL ZONE MANAGEMENT AUTHORITY

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

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

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

TRUE COPY

16

Ref. No.: GCZMA / Bar/CAL/08-09/101/811

Letter Land	Date:- 09/03/2010
Entry No.	DSL-146798
Dist.	513/10
Resurvey	

Superintendent of Survey
And Revenue, Panaji
Goa

To,
The Director
Directorate of Settlement and Land Records
Panaji Goa.

Sub: Site inspection and plan in respect of construction in survey
no. 319/2, 3, 5, 6, 12 of Village Panchayat Calangute

Ref: Writ Petition no. 391 of 2009

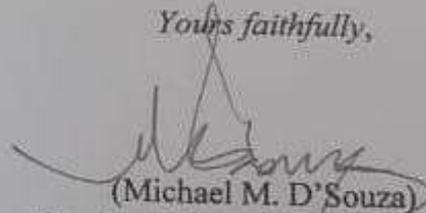
(Raj Kishan D. Khosla V/s GCZMA & 6 Ors.)

Sir,

In the matter of Writ Petition no. 391 of 2009, Hon'ble High Court of Bombay at Goa, was pleased to instruct the GCZMA to carry out mapping of the construction carried out by one M/s Elite Builders in survey nos. 319/2, 3, 5, 6, 12 of Village Panchayat Calangute. The Hon'ble High Court has also instructed to measure the distances from the High Tide Line to the current location of the construction.

2. The undersigned, telephonically requested Superintendent of Survey and his team in your office to carry out the mapping, which they have done on 26/02/2010 and 27/02/2010. It is kindly requested to provide the maps of the site alongwith the 500 metres High Tide Line and 500 metres Property Boundary abutting sea delineated on the said plan.

Yours faithfully,



(Michael M. D'Souza)

Member Secretary (GCZMA) &
Director/Ex-Officio, Joint Secretary (STE)

Copy to:-

1. O. S. D. to Hon'ble Minister for Environment, Secretariat, Porvorim... for kind information.
2. P. S. to Chief Secretary, Secretariat, Porvorim ... for kind information
3. P. A. to Secretary (Environment), Secretariat, Porvorim ... for kind information.
4. P. A. to Collector (North), Collectorate of North Goa, Collectorate Bldg., Panaji-Goa.