

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

WESTERN ZONAL BENCH AT PUNE

Appeal No. 34 of 2020

(Earlier)APPEAL NO. 55 OF 2019

IN THE MATTER OF:

MICHAEL FERNANDES

.....APPELLANT

Versus

GCZMA & ORS.

.....RESPONDENTS

INDEX

SR. NO.	PARTICULARS	PAGE NOS.
1.	Written Note on behalf of Respondent No.2	

THROUGH



RITWICK DUTTA



RAHUL CHOUDHARY

MAITREYA GHORPADE

ADVOCATES

Counsels for Respondent No.2

N-71, Lower Ground Floor, Greater Kailash-I,

New Delhi- 110048

litigation.life@gmail.com

+91 9310247881

Place: - PUNE/DELHI

Dated: 23.06.2021

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONAL BENCH AT PUNE**

Appeal No. 34 of 2020

(Earlier)APPEAL NO. 55 OF 2019

IN THE MATTER OF:

MICHAEL FERNANDES

.....APPELLANT

Versus

GCZMA & ORS.

.....RESPONDENTS

WRITTEN SUBMISSIONS ON BEHALF OF RESPONDENT NO.2

1. PRELIMINARY SUBMISSIONS

1. That the instant appeal has been filed by the appellant challenging the order dated 3.07.2019 passed by Respondent No.1, i.e., Goa Coastal Zone Management Authority ('GCZMA') whereby the appellant was directed with immediate effect to stop all commercial activities of operating a bar and restaurant in the name of 'M/s Mickey's Bar and Restaurant' in Sy. No. 96/1 Thondvaddo, Betalbatim Village, South Goa (hereinafter referred to as 'the impugned property') situated within 70-90 metres of the High Tide Line on Betalbatim beach.
2. The Appellant was directed to demolish all the structures 'M', 'N', 'O' and 'WC' (hereinafter referred to as the 'impugned structures') situated on Sand Dunes within the No Development Zone ('NDZ') of CRZ areas, and also to restore such Sand Dunes to their original condition within 30 days from the receipt of the said order.

A copy of the Directorate of Settlement and Land Records (DSLRL) Map of the property with identified structures 'M', 'N', 'O' and 'WC' has been annexed by the Respondent No. 3 as **ANNEXURE-4**, on **Pg No 140**.

3. That the following is an enumeration of the important dates and events pertaining to the present appeal:

Date	Event
8.07.1992	That the impugned property bearing Sy. No. 96/1 was purchased by one Ms. Tania Baretto and Ms. Nadia Baretto represented by their natural guardian Miniato Barretto, <i>vide</i> Deed of Sale dated 8.07.1992.
28.04.2000	Subsequently, the same property was purchased by Shri Ulrich Angerer <i>vide</i> Deed of Sale dated 28.04.2000.
9.02.2004	That Respondent No. 1, i.e, the Goa Coastal Zone Management Authority issued a Show Cause Notice to Shri Ulrich Angerer for illegal construction of Structure 'P' on the impugned property on Sy. No. 96/1 situated in CRZ areas of Betalbatim village. The said Structure 'P' situated on Sy. No. 96/1 was thereafter held by the GCZMA to be constructed in violation of CRZ Notification, 1991.
26.10.2004	The GCZMA issued a demolition order against Shri Ulrich Angerer for illegal construction of Structure 'P' built on the impugned property as such construction was found to be in violation of the CRZ Notification, 1991.
31.08.2005	<p>The demolition order dated 26.10.2004 was upheld by the Hon'ble High Court of Bombay in Writ Petition No. 557 of 2004 vide order dated 31.08.2005. The Hon'ble High Court held that the Structure 'P' as situated on Sy. No. 96/1 was constructed after the coming into force of the CRZ Notification, 1991, and was within 200 Metres of the High Tide Line, therefore in violation of CRZ Notification, 1991.</p> <p>The Hon'ble High Court accordingly stated:</p> <p style="text-align: center;"><i>"The mere fact that the offending structure has come into existence after 19th February, 1991, i.e. after the coming into force of the Coastal Regulation Zone Notification of 1991</i></p>

	<p><i>and that it falls within 200 mts. of the High Tide Line, it is but necessary that the offending structure must be demolished and that is what the Authority has ordered. The Specific finding that it is found necessary that the structure should be demolished is not required. The very consideration by the Authority shows that the Authority found it necessary that the offending structure is in violation of the CRZ Notification of 1991 and must be demolished.”</i></p> <p><i>(emphasis supplied)</i></p> <p>It is submitted that subject matter of the present Appeal, on which demolition order has been passed is same property.</p>
11.10.2010	<p>The same property bearing Sy. No. 96/1 was purchased by the Appellant vide Deed of Sale dated 11.10.2010. The recitals of the Deed of Sale however, make no mention of any structures as existing on the impugned property. It is pertinent to note that the Sale Deed dated 28.04.2000 by which previous owner of Sy. No. 96/1, i.e., Shri Ulrich Angerer purchased the said property also made no mention of any structure existing on Sy. No. 96/1.</p>
19.05.2016	<p>The GCZMA Inquiry Committee published report wherein it has concluded that the impugned structures lack the approval by the GCZMA and are illegally constructed. The said Inquiry Committee report has also held that the impugned constructions are located within the NDZ of CRZ-III area.</p>
3.07.2019	<p>The GCZMA issued demolition order concluding that all the structures present in Sy. No. 96/1 of Betalbatim village are illegal with no prior permission from any of the Competent Authority. Therefore, the GCMZA directed the Appellant to demolish all structures 'M' 'N' 'O' 'W.C.' and take necessary measures to restore the sand dunes to their original condition for which all costs were to be borne by the</p>

	Appellant. The GCZMA also directed the Appellant to stop all commercial activities being carried out in the name of M/s Mickey's Bar and Restaurant situated on the impugned property bearing Sy. No. 96/1 within 30 days of the receipt of the order.
--	--

2. SUBMISSION ON MERITS

A. The impugned structures are illegally built on Sand Dunes located within CRZ Areas in violation of the CRZ Notification, 1991.

4. At the outset, it is submitted that the impugned structures bearing nos. 'M', 'N', 'O' and 'WC' are built illegally on Sy. No. 96/1, Betalbatim Village, South Goa, situated within 70-90 metres of the High Tide Line on Betalbatim beach in pristine CRZ areas consisting of sand dunes for private business interests and all such construction and business activities are inconsistent with the letter and spirit of CRZ Notification, 2011.
5. As per Directorate of Settlement and Land Record (DSLRL) maps dated 30.04.2014 and Inquiry Committee report 19.05.2016, situated on the impugned property are Structure 'M' which is a temporary structure, Structure 'N' which is a permanent structure, Structure 'O' which is a shed, Structure 'W.C.', which is a permanent structure, and Structure 'P', which is present on Survey Plans but is not currently existing on the impugned property.
6. That structure 'P' constructed by previous owner Shri Ulrich Angerer in the said Sy. No. 96/1 after enactment of CRZ Notification, 1991, has been held by the Hon'ble High Court of Bombay to be constructed in violation of the CRZ Notification, 1991. Vide order dated 31.08.2005 in W.P. No. 557 of 2004, annexed at **Pgs 138-139**, the Hon'ble High Court accordingly stated:

*"It is clear from the aforesaid finding and which does not seem to suffer from any infirmity, that the offending structure has come into existence after 19th February, 1991. **The learned counsel for the***

petitioner did not dispute that the subject structure falls within 200 mts.of the High Tide Line.... The mere fact that the offending structure has come into existence after 19th February, 1991, i.e. after the coming into force of the Coastal Regulation Zone Notification of 1991 and that it falls within 200 mts. of the High Tide Line, it is but necessary that the offending structure must be demolished and that is what the Authority has ordered. The Specific finding that it is found necessary that the structure should be demolished is not required. The very consideration by the Authority shows that the Authority found it necessary that the offending structure is in violation of the CRZ Notification of 1991 and must be demolished."

(emphasis supplied)

7. It is therefore submitted that the Structures 'M','N', 'O', and 'W.C' existing on Sy. No. 96/1 have also been constructed within CRZ Areas after the coming into force of the CRZ Notification, 1991. That the Appellant has failed to provide any permission from the GCZMA for said structures and therefore the same have been held to be constructed without obtaining any permission from the GCZMA, in violation of the CRZ Notification, 1991.
8. It is submitted that there is no mention of the impugned structures in the Sale Deed dated 11.10.2010, through which the property was purchased by the Appellant. All the structures were built by the Appellant after he purchased the property on 11.10.2010. Thereafter, Structure 'N' was allotted House No. 46 by the village Panchayat. However, the Additional Directorate of Panchayat by order dated 24.02.2015 has quashed and set aside the allotment of House No. 46 to Structure 'N'. That no other permission has been produced by the Appellant before the GCZMA which establishes the legality of any of the impugned structures.
9. It is submitted that as per Para 6(2) of the CRZ Notification, 1991, the area upto 200 metres from the High Tide Line is to be earmarked as 'No Development Zone'. The same provision was amended in the CRZ Notification, 2011, wherein Para 8. III. A. stipulates that the area upto 200mts from HTL on the landward side in case of seafront *and* 100mts along tidal influenced water bodies or width of the creek whichever is less is to be

earmarked as 'No Development Zone (NDZ)', wherein no construction is permitted. Accordingly, Para 8. III. A. reads:

"8. III. CRZ-III,-

A. Area upto 200mts from HTL on the landward side in case of seafront and 100mts along tidal influenced water bodies or width of the creek whichever is less is to be earmarked as "No Development Zone (NDZ)";- (i) the NDZ shall not be applicable in such area falling within any notified port limits;

(ii) No construction shall be permitted within N D Z except for repairs or reconstruction of existing authorized structure not exceeding existing Floor Space Index, existing plinth area and existing density and for permissible activities under the notification especially facilities essential for activities; Construction/reconstruction of dwelling units of traditional coastal communities including fisherfolk may be permitted between 100 and 200 metres from the HTL along the seafront in accordance with a comprehensive plan prepared by the State Government or the Union territory in consultation with the traditional coastal communities especially fisherfolk and incorporating the necessary disaster management provision, sanitation and recommended by the concerned State or the Union territory CZMA to NCZMA for approval by MoEF"

It is submitted that the impugned structures are constructed within 70-90 metres of the High Tide Line at Betalbatim, located within CRZ-III area, and the same do not fall in any of the exceptions listed under Para 8. III. A. (ii). Accordingly, the GCZMA have held the same to be constructed in violation of CRZ Notification, 2011, and ordered for their demolition dated 3.07.2019, annexed at **Pgs. 26-35.**

B. No Documents/Permissions/Clearances have been produced before the GCZMA legitimizing the claims of the Appellant despite numerous opportunities provided to the Appellant to do so.

10. It is submitted that the Appellant has not been able to produce a single document justifying the construction of impugned structures within CRZ Areas. That the Appellant has relied on NOC dated 3.12.2012 (**Pg 88**) for construction of temporary structure on Sy. No. 96/1 and NOC dated 3.12.2012 (**Pg 89**) for operating a bar and restaurant on said property as issued by Village Panchayat of Betalbatim.

11. However, the GCZMA in the impugned demolition order dated 3.07.2019 has correctly held that the Village Panchayat is not vested with powers to grant

permission for construction or to legalize any structure located in CRZ Areas, and that such permissions are to be obtained from the GCZMA alone, which has admittedly not been done.

12. Furthermore, the Appellant has relied on certificate dated 6.01.2016 bearing no. 501 issued by NIZ Ramponkaranho Ekvott, Benaulim and the Caste certificate dated 18.02.2016 under no. 140/2016, neither of which are in any way significant to the present matter. That such certificates can at best be used for justifying fishing activities in CRZ Areas, but does not in any way legitimize the construction of structures and operation of bar and restaurant within NDZ of CRZ Areas.
13. The GCZMA has observed that all the documents produced by the Appellant, viz., NOC dated 3.12.2012 for construction of temporary structure on Sy. No. 96/1 and NOC dated 3.12.2012 for operating a bar and restaurant granted by Village Panchayat, Sale Deeds dated 8.07.1992, 28.04.2000, and 11.10.2010, certificate dated 6.01.2016 bearing no. 501 issued by NIZ Ramponkaranho Ekvott, Benaulim and the Caste certificate dated 18.02.2016 bearing no. 140/2016, are all documents dated/issued post 1991 i.e., after coming into force of CRZ Notification, 1991.
14. Accordingly, the Appellant was required to obtain permission from GCZMA prior to constructing structures in NDZ of CRZ-III area as per Para 2 of the CRZ Notification, 1991. However, the Appellant has not been able to justify why no permission has been obtained from the GCZMA despite have several opportunities to do so.
15. That the Appellant has submitted Reply dated 15/01/2015 to Show Cause notice issued by GCZMA, Sur-rejoinder dated 9.10.2015, Application dated 31.03.2016, and made submissions during Personal Hearings before GCZMA dated 31.07.2018, and 29.05.2019. The Appellant was also granted the opportunity to file written submissions by the GCZMA in their meeting dated 31.07.2018 and 14.08.2018. That throughout all such pleadings made before

the GCZMA, the Appellant has been unable to produce a single document justifying the illegal impugned constructions.

16. That all these facts have been considered by the GCZMA who have accordingly held, *vide* demolition order dated 3.07.2019 issued to the Appellant, that all the impugned structures present on the impugned property bearing Sy. No. 96/1 of Betalbatim Village are illegal as no prior permissions have been taken from the GCZMA for construction in NDZ of CRZ areas.
17. That the Appellant has filed Rejoinder dated 5.09.2020, wherein the Appellant has reiterated the same contentions as have been previously rejected by the GCZMA. The Appellant has produced absolutely no documentary evidence for issues raised. The Appellant has not been able to produce any documents whatsoever to establish the existence of such construction on the impugned property prior to 1991, or any valid permission for construction in CRZ Areas obtained prior to construction from the GCZMA. The Appellant has also not denied the fact that such construction is in the No Development Zone of CRZ areas.

C. GCZMA Denied All Averments Raised By Appellant

18. That the GCZMA vide Affidavit-In-Reply dated 26.08.2020 (**Pgs 142-146**) has denied all averments raised by the Appellant in the present Appeal and such submissions of Respondent No.1 are not being repeated for the sake of brevity.
19. That the GCZMA has stated, on Para 14 of Affidavit-In-Reply, on **Pg. 145**, that no relief whatsoever can be granted in favour of the Appellant. The GCZMA has stated that the Appeal is untenable on facts and law as no permission to erect and/or run a bar and restaurant structure on the impugned property has been obtained by the Appellant. That the Answering Respondent has previously submitted the same. That the Appellant has not been able to prove any of the claims upon which the said Appeal 55/2019

(WZ) has been filed. The Appellant is solely resorting to repeating and reiterating the same claims and grounds, which have already been decided by the appropriate authority.

20. That the following submissions have been made by the GCZMA vide Affidavit-In-Reply dated 26.08.2020 (**Pgs 143-145**) with regards to the untenable submissions of the Appellant:

"5. Without prejudice I say and submit that the Authority has passed a precise and exhaustive order dealing with each and every structure present on the said property, which structures have also been identified by the Inquiry Committee of the GCZMA. I say that the Inquiry Committee identified the following structures in the suit property

Structure N – Permanent

Structure M – Temporary

Structure O – WC & Shed

Structure P – permanent (demolished)

I say that as far as Structure P was concerned the same was demolished pursuant to a Demolition order dated 26.10.2004 passed by the GCZMA and upheld by the Hon'ble High Court of Bombay at Goa vide Order dated 31/8/2005 in WP No. 557/2004. I say that with respect to the other structures the Appellant has not been able to show a single permission from this Authority, and/or that the CRZ Notification would not be applicable. I seek to rely on and refer to the Impugned Order to spell out details of these 4 structures mentioned above.

....

11. With respect to the submissions and grounds raised by the Appellant in paragraphs (a) to (x), the same are baseless, false and denied. I say that the Appellant have not been able to produce a single documents on record justifying CRZ Clearance for even a single structure existing on site. Similarly, the plea of belonging to the fishing community is also baseless and without any documentation. I say that the protection to fishing community if any if on land belonging to the fisherman traditionally used for fishing activities prior to 1991. I say it is an admitted fact that the appellants came to be owners of the said property only in 2010 vide Sale Deed dated 11/10/2020. I say that even the Inquiry Committee has concluded that all structure lack this Authority's permission.

21. In light of the facts and circumstances, as well as the submissions herein above, it is respectfully submitted that the present Appeal deserves to be dismissed.

THROUGH



RITWICK DUTTA



RAHUL CHOUDHARY MAITREYA GHORPADE

ADVOCATES

Counsels for Respondent No. 2

N-71, Lower Ground Floor, Greater Kailash-I,

New Delhi- 110048

litigation.life@gmail.com

+91 9310247881

Place: - PUNE/DELHI

Date: - 2306.2021