

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, FARIDKOT HOUSE,
NEW DELHI**

APPEAL NO. 37/2020

(EARLIER APPEAL NO. 54/2019(WZ))

Ganesh alias Sujay Shripad Pai APPELLANT

V/S

State of Goa and 2 others RESPONDENTS

WRITTEN SUBMISSIONS ON BEHALF OF THE APPELLANT

MAY IT PLEASE THE HON'BLE TRIBUNAL:-

The Appellant most respectfully states and submits as under:-

1. The present appeal challenges directions issued by Respondent No. 2 GCZMA under Section 5 of the Environment (Protection) Act, 1986, read with Rule 4 of The Environment (Protection) Rules, 1986 on 24/06/2019 directing appellant to demolish the entire G+2 guest house in survey no. 162/17 and restoration of the land to its original condition.

2. The above directions are arising out of a proposal/application by the appellant seeking permission as regards repair of the existing residential house in the property bearing survey No. 162/17.

3. Pursuant to the proposal the expert members of the GCZMA carried out inspection on 09/11/2018. The proposal along with the site inspection report came up for deliberation in 193rd meeting of GCZMA held on 21/02/2019 and the authority decided to issue show cause notice to the appellant. Thereafter GCZMA issued a show cause notice to the Appellant as regards structures in survey number 162/17 of Arambol Village on the purported ground that all proposed reconstruction / construction/development /repair between 100 mts from the river and within the 200 mts of HTL of sea and other permissible activities require the prior approval of the GCZMA under CRZ notification 2011 and the alleged construction appears to be without any prior approval of GCZMA as required under CRZ notification 2011. The notice was replied by the appellant.

4. Thereafter the matter was discussed/ deliberated by GCZMA in its meeting held on 15/03/2019 and GCZMA decided to issue order of demolition to the Appellants House alleging it to be G+ 2 and also to restaurant structure in survey no. 162/10 of Arambol Village. Thereafter by the impugned directions dated 24/06/19, the Appellant has been directed to demolish the entire guest house structure in

survey number 162/17 and restaurant structure in survey number 162/10. GCZMA has arrived at the decision by proceeding on the basis that as per the findings of the expert members (GCZMA) inspection report, the old house standing in the survey no 162/17 still stands untouched and Appellant was using the documents of the old house to justify the newly illegally constructed structure, when the case of the Appellant was that the documents referred and relied upon were pertaining to his only residential house which has been reconstructed/ repaired and apart from the same there is no other old house of the Appellant at all existing or standing untouched in the property under survey number 162/17. The GCZMA has wrongly construed the old house with the mezzanine floor with an old shop in front on survey number 162/10 to be a structure on survey number 162/17, besides there is also complete misconstruction of documents of inventory proceedings by the GCZMA.

5. In pursuance of order dated 07/11/2019 of this Hon'ble Tribunal GZCMA has done fresh inspection. Though as per the notice of inspection 2 expert members were to visit the site, inspection is done through a sole expert member of GCZMA. His inspection report dated 13/01/2020 does not at all refer to any other old house of the appellant/ house in dilapidated condition existing and/or still standing untouched in property under survey No. 162/17 at Arambol apart from the house repaired/reconstructed. Such reference to old

house in dilapidated condition and standing untouched (not demolished) in earlier inspection report dated 09/11/2018 and which was wrongly construed by GCZMA to be existing in property under survey No. 162/17, is completely negated by new inspection report carried out as per the orders of this Tribunal. In such circumstances impugned directions of the GCZMA are required to be set aside and GCZMA is required to be ordered to consider the application/proposal of the appellant on its own merits after hearing all sides.

However in the inspection report dated 13/01/2020, the sole expert member of the GCZMA, who carried out the inspection, has himself purported to rule and/or give findings on Appellants documents and on their admissibility and relevancy vis-a-vis the Appellants claims and on the legality/ illegality of the construction /structure of the Appellant. The expert member of GCZMA cannot take up on himself the role and powers of the GCZMA, Respondent No. 2 and rule on the Appellants documents and/or on their admissibility and relevancy and/or on the legality or illegality of Appellant's construction. His inspection report dated 13/01/2020 and appellant's objections on it are also required to be considered by the Respondent No. 2 GCZMA.

Brief facts of the case are as follows:

Ownership/Title/ existence of authorised building/structure

6. The Appellant is a co-owner of the properties surveyed under survey Nos. 162/10 and 162/17 of village Arambol situated within Village Panchayat Arambol, Pernem-Goa. In the property surveyed under survey Nos. 162/10 there exist a old house belonging to the family of the Appellant bearing house no. 128 and in the property bearing survey no. 162/17 there exist another old house bearing house no. 127 (new)/ 63 (old house number). These houses are in existence prior to Liberation of Goa and prior to the promulgation of survey records in Form I and XIV under the Goa, Daman and Diu Land Revenue Code, 1968 and Rules.
7. The property bearing survey no. 162/17 admeasures an area about 722 sq. mts. and has devolved upon Appellant and his other family members through his father Late Shri. Shripad Ganesh Pai. By virtue of Judgment dated 27/11/2012 in the Inventory Proceedings said property under Survey No. 162/17 listed at item No. 5 was allotted to all the legal heirs of late Shri Shripad G. Pai.
8. The house bearing house no. 127 (new)/ 63 (old house number) is also reflected in the survey plan of survey no. 162/17 of village Arambol, Pernem – Goa. The survey plan of the property not only reflects the house structure but also a Mundkarial house existing in the property. Appellant's father's name is also recorded in the Form I and XIV of the survey records in respect of the said property. The

house bearing House No. 127(New) / 63 (old) of the appellant also had a “mali” accessible through an internal staircase. This “mali” is a Konkani term for what is known as “mala” in Marathi which is an upper floor.

9. The aforesaid ancestral house of appellant in Survey No. 162/17 was assessed to House Tax by the Village Panchayat under House No. 63(old), 426(Old), 532(A) in the name of appellant’s father Shripad Ganesh Pai from year 1965 to 2000. Thereafter the house was re-numbered as House No. 127 (New) and was assessed in the name of appellant’s father from the year 2000 to 2009. Thereafter from 2010 the House Tax has been transferred in Appellant’s name.
10. Appellant’s family was doing their grocery business (Shop) through a portion of the house existing in survey No. 162/17 including trading in sugar. Appellant’s late father Shri Shripad Ganesh Pai had also applied for renewal of licence dated 06/05/1972 for trading in sugar. The Sugar Licensing Order in respect of the aforesaid house establishes that the father of the Appellant was trading in sugar from the year 1963 from the said house bearing no. 63 (old). The structure also had electricity connection since the time electricity entered the village and the same is evident through electricity bills. The electricity and water connection in respect of the said house/structure is also of many years earlier. There are also local village Panchayat

receipts in respect of business activity carried on from the said structure. The Village Panchayat had also imposed Professional tax for the business activities there under.

11. Existence of said house and commercial establishment of shop is even reflected in the original title deeds of the property, whereby the grandfather of the Appellant was gifted the property in the year 1952.

Repair/alteration/renovation and Application seeking permissions thereof:

12. It is the case of the Appellant that as the aforesaid house under number 63 (old) was very old, on account of passage of time got in a dilapidated condition and was repaired from time to time prior to the year 1990. However the structure being old required further urgent repairs and accordingly was taken up for repairs by Appellant's late father in the year 2009. When the repairs had reached almost completion stage, Appellant's father expired in August 2009 and Appellant completed the ongoing repairs which had reached at completion stage and as they were necessary for the structure to stand. The repairs done are otherwise prior to coming into force of 2011 CRZ notification.

13. It is further the case of the Appellant that though the works undertaken were repair works, however in order to avoid any complications in the matter, by application dated 06/01/2010, he applied for permission for repairs to the existing structure, i.e. house bearing no. 63 (old)/ 127 (new) from the Respondent No. 2. Despite regular follow-ups and requests by the Appellant, the application remained to be decided by Respondent No. 2.

14. Appellant also applied to the village Panchayat for licence/permission in respect of the repairs but was informed that without clearance from the CRZ authorities, the application for permission cannot be considered the application was actually an application seeking regularisation. It is submitted that as per the CRZ norms repairs and even reconstruction or alteration of existing authorised buildings/structures is permissible though there are some restrictions.

15. According to Appellant the repairs done are on existing plinth of the old house and in any case plinth cannot be exceeded on account of the structure being surrounded by other building/ houses of neighbours. Basically there is change of roof, however as it was found that without reinforcement of cement concrete there was no alternative to keep the old house structure with "Mali" (Mala) standing, the upper floor which was earlier 'Mali' has been

supported with RCC. Further certain internal alterations/ renovations were carried out so that the structure can be used as a guest house. Above the first floor which was the existing 'Mali' of the old house, only metal sheets have been put on top of the metal G. I. pipes and with a view to protect first floor from any leakages during monsoon. However on account of the said metal sheets put on metal G.I. pipes the structure looks like G + 2 (ground plus two) but is actually only a G + 1 (ground plus one) structure. Inspection report of GCZMA dated 09/11/2018 also observes and corroborates that the G+1 structure looks like G+2 on account of the metal sheets on metal G.I. pipes.

16. According to Appellant the repairs done are otherwise within the norms and parameters laid down under the CRZ Notification. Under CRZ notification 2011 as also under 1991 notification reconstruction or alteration of existing authorized building is also permissible though subject to certain restrictions.

17. The local village Panchayat has also issued NOC's in respect of the house bearing No. 127 for the purpose of obtaining electricity and water connection. The NOC would also show that states the construction is a legal construction.

18. It is submitted that change in nature of earlier grocery business carried on through house structure in survey No. 162/17 was necessitated on account of changed circumstances and as earlier business was not yielding much income for the survival of Appellant and his family members. In such circumstances necessary permission/NOC dated 29/06/2015 towards change of trade has been obtained from local Panchayat and the necessary fees have also been paid.

19. It is further the case of the Appellant that the Respondent no. 3, is in enimical terms with Appellant's family and therefore has complained before the Goa Coastal Zone Management Authority and the Panchayat alleging appellant's construction to be illegal.

20. As appellant was informed that on account of 2011 CRZ Notification, he may have to apply afresh, by abundant caution, by another application dated 07/12/2015 which was in continuation of his earlier application, Appellant again applied to GCZMA for repair permission from CRZ angle in respect of the existing house in survey No. 162/17. Necessary fees for the purpose of obtaining the NOC for repairs are also paid on 08/12/2015. The application is supported with plans and various details.

Complaint and reply

21. However pursuant to complaint By Respondent No. 3 show cause notice dated 23/24-08-2016 was issued to the Appellant by the Respondent No. 2 which was also replied by the Appellant by dated 29/08/2016.

Site inspection /Show-Cause notice/ proceedings before GCZMA

22. By notice of site inspection dated 26/10/2018, the Respondent No. 2 conducted a site inspection of the structure in survey no. 162/17 of Village Arambol on 09/11/2018. The site inspection report was not supplied to the appellant along with the show cause notice or during hearing and has been provided for the first time as an annexure to the impugned directions/ order dated 24/06/2019.

The non supply of inspection report caused serious prejudice to the Appellant. Such non furnishing of the report violates the principles of audi alteram partem.

23. After the site inspection GCZMA issued a show cause notice dated 01/03/2019 purportedly under Section 5 of the Environment (Protection) Act, 1986, read with Rule 4 of the Environment (Protection) Rules, 1986 alleging carrying out of illegal construction of Ground plus two floors for commercial use and illegal construction of a restaurant on survey no. 162/17 of Village Arambol and called upon the Appellant to show cause as to why a direction to

demolish the structure and to restore the land to its original condition should not be issued.

24. The show cause notice was replied by the Appellant by reply dated 08/03/2019 along with all the supporting documents. The Appellant also attended personal hearing held on 15/03/2019 and also filed written submissions.

25. With a view to provide clarifications as regards nature of internal floor "Mali" to the house, by letter dated 18/04/2019 Appellant also submitted photographs of his another house bearing house no. 128 existing in a different property under survey no. 162/10 of Village Arambol and also clarified that there was no second floor to the structure bearing no. 63 (old) and 127 (New) in survey no. 162/17 and there was only erection of metal sheets on top of the metal G. I. pipes for protecting first floor from any leakages during monsoon.

26. By letter dated 02/05/2019, Appellant provided further clarification with respect to the repairs carried out and requested for further personal hearing.

Impugned Directions dated 24/06/2019

27. However on 28/06/2019, Appellant was served with the above Directions under Section 5 of the Environment (Protection) Act,

1986, read with Rule 4 of the Environment (Protection) Rules, 1986 dated 24/06/2019, directing the Appellant to demolish the entire ground plus two guest house in survey no. 162/17 and restaurant structure in survey no. 162/10 of Village Arambol, Pernem Goa and to restore the land to its original condition within 30 days from the date of receipt of the order.

Writ petition 628/2019

28. Aggrieved by the directions dated 28/06/2019 the appellant filed writ petition no. 628/2019. By an order dated 23/07/2019 the High Court of Bombay at Goa quashed and set aside the directions relating to the Survey No. 162/10 being without no show cause notice issued by the Respondent no. 2 and liberty was granted to the appellant to avail the alternate remedy of appeal before the National Green Tribunal in so far as the directions for demolition of the G+2 guest house in survey no. 162/17.

Appeal before NGT

29. Present Appeal is filed thereafter against the directions of GCZMA and for reliefs as prayed for.

30. During the pendency of the present appeal, the Appellant filed additional affidavit dated 26/10/2019 to bring on record certain important facts.

Submissions:

**GCZMA proceeding on erroneous and wrong basis as regards
existence of old houses structure standing untouched in property
under survey no. 162/17**

31. The report of site inspection on 09/11/2018 (considered by GCZMA) and supplied to the Appellant for the first time as an annexure to the impugned directions/order records that the structure reconstructed by the appellant's father was from an old ground floor house at site existing much prior to the year 1991 as per the Arambol panchayat records and also that the structure reconstructed at site is in place of the existing old house. The site inspection report further observes that the structure seen at the site was G+1 structure with metallic sheets on the top of first floor and on account of which it has got converted into a G+2 structure. The report also records that the DSLR plan shows the existence of the structure at site in survey no. 162/17.

32. However in the Report of site Inspection dated 09/11/2018 at serial no. (xiii) and (xiv) following observations are also found:

“xiii) Similarly, behind the Guest House and a Restaurant, there is a garden area having an old house with a mezzanine floor and in its front there is one old shop. Both these structures are in dilapidated condition and are not touched by Mr. Ganesh Pai.

xiv) The present new House no. of the structure with a mezzanine floor is 128, whereas it old H. No/ was 427. Similarly, the new shop no. is 14 and its old No. is 08.”

33. It is respectfully submitted that the above observations in site inspection report of 09/11/2018 as regards old house untouched do not pertain to property under survey no. 162/17 as apart from house structure repaired /reconstructed no other structure of the Appellant exists in the property under survey no. 162/17. Though the inspection report does not mention about survey no. of the garden area with old house of Appellant with mezzanine floor having old shop in front, said old house with mezzanine floor having old shop in front mentioned in the observations in inspection Report at Sr. No. (xiii) and (xiv) is actually Appellant's old house under house No. 128 in Survey No. 162/10 which property is situated at a distance of about 50 meters from property under survey no.162/17 with intervening private properties in between and has been mixed up in the inspection report with property under survey no. 162/17.

34. However the Respondent no. 2, GCZMA in complete misreading of the said observations and contrary to the site inspection report and observations/conclusions therein has proceeded on the basis that the appellant had constructed a new illegal structure by keeping the old house standing in survey no. 162/17 untouched and has further

concluded that the old house standing in survey no. 162/17 still stands untouched and the appellant was using the documents of the said old house to justify the new illegally constructed structure.

35. The observation of the CRZ Authority in its decision taken during the 194th meeting (Annexure D to the Directions) recording that 'As per the findings of the Expert Members (GCZMA) Inspection report it is noted that the old house standing in survey no. 162/17 still stands untouched' is therefore and in the aforesaid circumstances is factually incorrect, perverse and is either based on misreading of inspection report or on account of some mix-up and confusion by the inspecting team in the report dated 09/11/2018 of two properties 162/10 and 162/17 and consequently affecting the conclusions and findings in the impugned directions. It is submitted that there is no other old structure belonging to the appellant standing in the said property bearing survey no. 162/17 of Village Arambol besides the old structure repaired and which is reflected in the survey records.

36. Such omission and/or error as regards survey number of the property in the inspection report has caused severe prejudice and injustice to appellant as the GCZMA whilst issuing impugned directions has proceeded on wrong and erroneous basis that an old house is still standing untouched in survey no. 162/17 and Appellant is using documents of that house to justify a new illegal construction. The

GCZMA has also ordered demolition on the basis that the appellant has constructed a wholly new illegal structure in survey no. 162/17 and the old house standing in survey no. 162/17 still stands untouched, which basis is wholly erroneous. The mix-up and the above errors of omission and wrong reflection of Survey numbers have caused gross injustice and prejudice to the Appellant.

37. On account of the mix up, omission and errors in survey numbers, wrong and erroneous basis, the demolition order has been made in respect of appellant's ancestral structure in survey no. 162/17, on the ground of existence of another old house in the property and by considering the documents produced by the appellant as being relating to such an old house, when at loco and in fact there is no such another old house/structure of the Appellant at all in the property bearing survey no. 162/17 of Village Arambol.

New inspection report dated 13/01/2020 vis-à-vis GCZMA finding of old house still standing untouched

38. In the aforesaid circumstances this Hon'ble Tribunal had ordered fresh site inspection. (Kindly refer order of the Hon'ble Tribunal dated 07/11/2019). In view of the order dated 07/11/2019 of this Honourable Tribunal, fresh site inspection has been conducted. The new inspection report dated 13/01/2020 does not mention or refer to any old house either dilapidated or still standing untouched in

Appellant's properties under survey no. 162/17 and actually disproves and negatives any existence of such old house in the property apart from the old structure which is repaired/reconstructed. Therefore the mix-up of 2 properties under survey no. 162/17 and other under survey no. 162/10 is clearly evident resulting in erroneous conclusion of GCZMA as regards old house still standing untouched and Appellant using the documents of the old house to justify his new illegally constructed structure and that structure/house in survey no. 162/10 were considered by GCZMA to be in property under 162/17. The various documents on record, clearly establish the existence of the appellant's only ancestral house in survey No. 162/17 which has been repaired and reconstructed and that the same was in existence prior to the year 1991. In such circumstances the impugned order which is based on a completely erroneous and wrong basis of existence of some other old structure of the appellant in the property 162/17 still standing untouched, is illegal and liable to be set aside.

39. It is pertinent and important to note that the new inspection report does not at all refer to the existence of old house with old shop in front and being in dilapidated condition which itself show that the impugned order of GCZMA dated 24/06/2019 in appeal was based on an incorrect report and wrong factual basis of existence of old house with old shop in front and in dilapidated condition. On

account of such incorrect report and wrongful basis, the GCZMA had reached the conclusion of appellant using the documents of old house to justify the new construction. It is submitted that as the report and its basis was incorrect and/or wrong, the conclusions of the GCZMA on the basis of the said report are wrong and illegal and the GCZMA order dated 24/06/2019 is therefore required to be set aside.

Non Supply of inspection report along with Show-cause Notice

40. The appellant has been seriously prejudiced and inconvenienced also because of non-supply of the inspection report along with the show cause notice and even during the personal hearing. If the inspection report was made available to appellant earlier, he would have been able to demonstrate and clarify the above aspects and to satisfy the Authority that apart from the repaired structure, the appellant has and had no other house/ structure in the property bearing survey no. 162/17 and that all the documents produced by the appellant were relating to and were of the old structure under house no. 63 (old) and 127 (new) in the property bearing survey no. 162/17 of Village Arambol. Such report was also required to be supplied along with the show-cause notice in view of judgment/order of this Tribunal in the case of M/s Sesa Goa Ltd. and another v/s State of Goa and ors dated 11/04/2013.

GCZMA role as regards approvals/permissions

41. The GCZMA whilst considering proposals for approvals/permissions as regards repairs /alterations/ reconstructions has to see the following aspects:

- (i). Whether the buildings in respect of permission for repairs/construction/reconstructions are sought were existing authorised buildings.
- (ii). Whether the construction does not exceed 9 meters with 2 floors, ground + 1.
- (iii). Whether the construction violates or is detrimental to coastal ecology or coastal environment.
- (iv). Whether whilst constructing original plinth has been exceeded and to what extent.

In the present case according to appellant, the structure, the reconstruction and repairs are to the existing authorised building. The height of 9 meters has not been exceeded and the structure is ground plus one and only on account of the metal sheets on the ground floor it looks like G+ 2 structures. The present construction is not detrimental to coastal ecology or coastal environment. According to Appellant plinth is also not exceeded.

Inventory Proceedings

42. It is submitted that inventory proceedings as per the family laws applicable to Goa are proceedings for division and allotment of the properties to interested persons in inventory and in the said

proceedings for division of properties there is no requirement of law to mention about any structures existing thereon.

GCZMA cannot insist on prior Repair Permission/ approval from the Panchayat

43. It is submitted that in a CRZ Area, Panchayat would consider repair applications only after CRZ nod/approval. In such circumstances there cannot be any insistence of prior construction/ repair licence from the panchayat by the CRZ authority for the purposes of approval from CRZ angle and the application seeking CRZ approval is required to be processed independently of the same. It is submitted that even constructions put up without requisite approvals can be regularised/approved subsequently if they comply with CRZ/Building regulations. The authority has tried to put the procedure in reverse gear which is impermissible.

44. In the totality of circumstances and grounds and reasons the impugned directions are liable to be quashed and set aside and the GCZMA is required to be directed to consider the application of the appellant for reconstruction/ repairs on its own merits or in the alternative matter is required to be remanded back to the Respondent no. 2, GCZMA after quashing the directions for reconsideration of the appellant's application for reconstruction/ repairs and the new inspection report along with appellant's objection on the same.

Fresh Inspection/ New Inspection Report/ Objections

45. In pursuance of order of this Hon'ble tribunal dated 07/11/2019 various notices dated 21/11/2019, 29/11/2019, 06/12/2019, were send to the appellant intimating about the fresh site inspection. However the site inspection was cancelled on each occasion for various reasons. No prior intimation about cancellation of site inspection was also given to the appellant. By letter/Notice dated 31/12/2019, the respondent No. 2 again informed about fresh site inspection on 08/01/2020 at 10:30 a.m. After conducting the site inspection on 08/01/2020 the Respondent No. 2 has prepared a site inspection report dated 13/01/2020 and has submitted the same before this Hon'ble Authority.

46. The Appellant has filed his say/response dated 19/02/2020 on the site inspection report before this Hon'ble tribunal. The report and/or findings are bad, incorrect, arbitrary, illegal and vague interalia for following grounds and reasons:-

- i) The inspection report exceeds and is beyond the terms of reference and there are deviations from the order/directions of this Honourable Tribunal. By order dated 07/11/2019 this Hon'ble tribunal had called for fresh site inspection in view of paras (xii), (xiii) and (xiv) of the earlier report of site

inspection dated 09/11/2018. These paras made reference to DSLR plan showing the existence of structure at site in survey no. 162/17 but also make reference to an old house with a mezzanine floor having in its front an old shop, both stated to be in dilapidated condition and further stated not to have been touched by the Appellant. GCZMA in its order dated 24/06/2019 after referring to the said notings of the expert members in their (GCZMA) inspection report about the old house standing in the survey no. 162/17 still standing untouched had concluded that appellant was using the documents of said old house for justifying the newly illegally constructed structure. New site inspection report dated 13/01/2020 does not at all deal with these aspects (nor touches the paras (xii), (xiii) and (xiv) of the earlier report) but proceeds on revenue matters, ownership aspects, interpretation of documents produced thereby completely deviating beyond the terms of reference and order/directions of this Hon'ble tribunal.

- ii) The new report tries to analyse and interpret and comments upon various ownership documents of property and the structures, which exercise is completely impermissible. It is not permissible for the expert member to take upon himself decision or analysis about the ownership of the structures and/or about relevancy/and admissibility of the documents to

the ownership claim of the appellant or with regards to the claim of its existence prior to 1991, without placing the same before the Respondent No. 2 GZCMA for its decision. It is submitted that the expert member cannot take such a decision on its own and the documents are required to be placed before the authority for taking appropriate decision.

iii) There is also over stepping of jurisdiction from technical aspects to the revenue aspects which is a colourable exercise of power. The document of the revenue is only a survey plan (which is a technical survey document). However the inspection member introduces Form I and XIV which is a revenue document and which has nothing to do with the technical aspects. It is respectfully submitted that the expert members of the inspection team are technical members/officers and are not supposed to deal with revenue aspects.

iv) New Report of site Inspection further also is in variance with the survey documents. Inspecting team/Expert member of GCZMA has tried to put his own reading on the survey documents and has even gone to the extent of mentioning that the areas shown in the survey documents are wrong. It is submitted that this exercise is not open to the expert member.

v) Though the earlier site inspection report dated 09/11/2018 clearly refers to existence of appellant's structure shown in survey plan, the new report does not at all take into consideration existence of such structure of the appellant even though reflected in survey record completely ignoring the documents placed on record such as survey plan, panchayat records of taxation, records of trade tax, records of commercial business in sugar from 1963.

47. It is respectfully submitted that in this circumstances the directions issued by the Respondent No. 2 by the impugned order are completely arbitrary, unreasonable, in excess of jurisdiction, illegal and void and are referable to misdirection's in law. The findings and the decision of the Respondent No. 2 taken on 15/03/2019 in the 194th GCZMA meeting is also arbitrary, illegal, unreasonable, bad in law on account of the aforesaid reasons.

The Impugned Directions travel beyond the scope of the show cause notice

48. The Directions had also travelled beyond the scope of the show cause notice and were addressed even against structures in Appellant's property under Survey No. 162/10.

49. Further the basis of the impugned directions is construction of a new illegal structure keeping the old house/ structure untouched which

was not the basis of the show cause notice. In such circumstances, the appellant is seriously prejudiced and did not have fair and adequate opportunity to respond and represent before GCZMA.

50. The show cause notice was on the alleged ground that proposed reconstruction/ construction/ development/ repairs between 100 meters from the river and within 200 meters HTL of sea and other permissible activities require prior approval of the GCZMA under the CRZ notification, 2011 and the alleged construction appears to be without any prior approval of the GCZMA as required under the CRZ Notification 2011. The house/ structure repaired/ renovated in survey no. 162/17 is admittedly not within the No Development Zone under the CRZ and is at a distance of about more than 400 meters from the High Tide Line and at such a distance from the HTL, repairs/ reconstruction/ alterations are permissible.

The purported basis of the show cause notice was inspection report dated 09/11/2018 wherein the charge was as regards reconstruction of the structure from an old ground floor house at site in survey no. 162/17 existing much prior to year 1991 and conversion of a part of a same from a general merchant shop to a restaurant and impugned directions proceeding on different ground or basis of illegal construction of new structure keeping the old house structure in survey no. 162/17 untouched.

51. Though the appellant was not furnished the inspection report dated 09/11/2018 along with the show cause notice (the same was furnished with the impugned directions), a perusal of the said inspection report would show that the inspection report had proceeded on the basis of reconstruction of the structure from an old ground floor house at site existing much prior to the year 1991 and conversion of the part of the same from a General merchant shop to a restaurant without obtaining any permission from the GCZMA. But the impugned directions in violation of principles of natural justice and without affording adequate opportunity to the appellant to know the actual charge and to response, proceeds on the basis that the old house structure still stands untouched and the appellant has illegally constructed a new structure. It is submitted that this was not the ground or the basis on which the appellant was told to show cause. In such circumstances there is complete violations of principles of natural justice and rules of fair hearing besides such ground or basis of the impugned directions is contrary even to the observations of the expert members of the GCZMA in their inspection report dated 09/11/2018 on which the show cause notice was based resulting in denial of fair hearing and effective representation to the appellant. The Impugned directions are based on allegations which are not found in the show cause notice itself.

52. For the above reason also the above impugned directions are beyond the ambit and scope of the show cause notice issued which is also in violation of principles of natural justice. Reliance is placed on the judgment of the Supreme Court of India in the case of *Godrej Industries Limited V/s Commissioner of Central Excise* (2008) 17 SCC 471 and *Trilochan Dev Sharma V/s State of Punjab* (2001) 6 SCC 260.

Non Consideration of vital material/ document placed on record and / or misreading of the same.

53. The GCZMA has not considered vital material / document placed on record in support of the existence of appellant's old house/ structure in survey no. 162/17 and has also misread even the inventory document. The material/ documents of the Appellant has not been fairly and consummately considered/ examined resulting in denial of fair hearing to the appellant.

Whether CRZ Regulations 2011 are applicable?

54. It is respectfully submitted that as admittedly the repairs/renovations were carried out by the Appellant's father were prior to 2011 and therefore show cause notice and impugned directions based on alleged violations as regards CRZ Regulations 2011 are illegal and arbitrary.

55. As submitted earlier, the Appellant had applied to the GCZMA for repair permission to the existing structure by application dated 06/1/2010 which remained to be decided. The same was actually an application for the purpose of seeking regularisation as repairs were started by Appellant's late father in the year 2009 and were only completed by the appellant before the said application. The local village Panchayat had also issued NOC's in respect of the said house bearing house no. 127 for the purpose of obtaining electricity and water connections. The NOCs are dated 11/10/2010 and 25/10/2010 respectively.

56. In the above circumstances, the CRZ regulations 2011 which were come into force subsequently and of whose violations is alleged in the show cause notice are and cannot be made applicable to the Appellant's construction/ structure.

Further submissions

57. It is further respectfully submitted that in the light of material/documents placed on record as regards the old existing structure of the Appellant's family in Survey No. 162/17 alongwith various other permissions from Panchayat and more particularly in view of even depiction of the structure in promulgated survey records/survey plans, the approach of the Respondent No. 2 and the methodology employed for testing the legality of the structures in

question is wholly arbitrary and unreasonable. The insistence of the production of construction/repair license from the Panchayat for proving the legality of the structure in the background of the above factors is more arbitrary and unreasonable when for the repairs permission in CRZ area. The Panchayat would consider the permission for repairs only after CRZ nod/approval. The authority has tried to put the procedure in reverse gear which is impermissible. It is submitted that even constructions put up without requisite approvals can be regularised/approved subsequently if they comply with CRZ/Building regulations.

58. It is submitted that the repairs/ renovations were executed by appellant's late father and the appellant on account of the imminent circumstances and the same are meeting the requirements of law for construction even in area affected by CRZ regulations.

59. The Directions dated 24/06/2019 issued by the Respondent No. 2 are also arbitrary, illegal, bad in law and in violation of principles of natural justice as no adequate hearing was provided despite of appellant seeking for further personal hearing by his letter dated 02/05/2019.

60. It is respectfully submitted that the Expert members of Respondent No. 2 (first report) have also arbitrarily recorded in their report of

site inspection that the Appellant, Mr. Sujay Pai has expired when the Appellant is very much alive and it his father, Mr. Shripad Pai who had expired.

61. In the aforesaid circumstances the appeal requires to be allowed and the Impugned Direction/Order dated 24/06/2019 bearing reference no. GCZMA/N/15-16/152/929 in so far as the same relates to the structures in survey no. 162/17 of Arambol Village is required to be quashed and set aside or in the alternative the matter is required to be remanded to GCZMA to consider the matter afresh after giving personal hearing to the appellants in view of the new inspection report and the objections thereto.

62. The Appellant craves leave to file additional written arguments after the Respondents file their written arguments and also to advance further oral arguments/ submissions

Date: 28 /06/2021

Place: Panaji-Goa



ADV. FOR THE APPELLANT