

**WRITTEN SUBMISSIONS ON BEHALF OF THE APPELLANT**

***Luciano Joao Fernandes v. GCZMA &Ors;***

Appeal No. 56/2019

1. The Appellant herein has impugned the order dated 18.02.2019 passed by the GCZMA wherein the authority has directed the demolition of *inter alia* structure bearing H. No. 818 in Sy. No. 130/4 of Morjim Village, Pernem Taluka. Though there is also an allegation *qua* other structures in the same property, the same have been removed by the Appellant (to the extent that they are within his property). This Appeal is therefore restricted to a single structure bearing H. No. 818 in Sy. No. 130/4 of Morjim Village, Pernem Taluka.
  
2. The primary issue in this appeal is whether the subject structure is a pre-existing structure on the date of the coming into force of the CRZ Notification, 1991 i.e. 20.02.1991. Tersely stated, the Appellant produced a permission of 31.03.1987 for a "***Restaurant and Cold Drink House***", which has been ignored by the GCZMA in ordering the demolition of the structure bearing H. No. 818 in Sy. No. 130/4 of Morjim Village, Pernem Taluka, which structure is legal and beyond the purview of the CRZ Notification, 1991.

STRUCTURE IN EXISTENCE PRIOR TO 1991

3. The Appellant submits that the said order is erroneous inasmuch as the structures have been in existence prior to 1991, and requirement of prior clearance under the CRZ NOTIFICATION 1994 and 2011 would not be applicable to the Appellant's structure. The Appellant, to establish that the structures were constructed prior to 1991, had also placed the relevant documents before the GCZMA, which included:
  - a. A Permission for Restaurant and Cold Drink House dated 31.03.1987 issued by the Village Panchayat of Morjim (*at pg. 44*).
  - b. Light Tax receipts dated 07.02.1986 (*at pg. 37*).

Pertinently, the permission dated 31.03.1987, specifically records that it pertains to the “*premises No. 818, surveyed under No. 130/4*” and is granted for the purpose of operation of a “*Restaurant and Cold Drink House*”.

4. Though the said permission dated 31.03.1987 expressly states that it is for a “*Restaurant and Cold Drink House*”, the GCZMA however, has glossed over this document and wrongly stated that it pertains to a “*residential house*”, as follows:

*“The respondent has submitted house tax and light tax receipt of the year 1982-83 and 1986-87. The respondent has submitted receipt of fee for reconstruction of house dated 07/05/1986, certificate of registration fishing boat and marine fisheries identity card issued by govt. of India. These documents pertains to a residential house while the site inspection report of expert members has clearly noted that there is one shack with a kitchen and a bar counter, erected on concrete plinth provided with a flooring of kadappa stones.”* [Emphasis added]

5. This is an error on the face of the record.
6. It is in this light that this Hon’ble Tribunal had, on 23.01.2020, after hearing this Appeal at length sought for an explanation with respect to the said permission dated 31.03.1987, from the GCZMA:

*“3. Learned Counsel for the appellant, however, points out that the document issued by Village Panchayat Morjim dated 31.03.1987 pertains to survey no. 130/4 and premises no. 181. The authority observed that the property was a house while at the time of inspection it was found to be a shack. According to the appellant, the documents itself shows it to be a restaurant and a cold drink house.*

*4. Learned counsel for the GCZMA seeks time to explain the position.”*

[Emphasis added]

7. That the aforesaid position has been admitted by the GCZMA (at para 2(c) of IA No. 349/2020), however, despite a lapse of over 9 months from the said order, no explanation on the aforesaid document dated 31.03.1987 is forthcoming; and even the reply filed by the GCZMA on 09.10.2020, provides no clarification as to said document and no explanation for why the same was not considered. In other words, just like the Impugned Order, the Reply too merely skirts the issue as to

the express permission for "*Restaurant and Cold Drink House*" dated 31.03.1987.

8. Hence, it is clear that the GCZMA's order is bad in law, for having ignored and not considered the effect of an express permission to run a "*Restaurant and Cold Drink House*" of a date (31.03.1987) which predates the CRZ Notification, 1991, which came into force on 19.02.1991. Consequently, the structure in question is clearly permissible, since it predates the CRZ notification.
9. It is thus evident that the GCZMA has failed to apply its mind while considering the Appellants case, and hence, the matter ought to be remanded back to the GCZMA for a proper consideration.

#### GCZMA WAS IMPROPERLY CONSTITUTED

10. The Appellants further submits that the Respondent Authority was improperly constituted, in contravention of the notification dated 26.10.2016 (*pg. 73*), and did not possess the requisite quorum in terms of clause 9 of the said notification; which is evident on an examination of the minutes of the 191<sup>st</sup> Meeting of the Respondent Authority (*pg. 76*). Pertinently, 4 members were not present in person, but through their representative, namely, the (1) Director, Directorate of Fisheries, (2) Director, Directorate of Panchayat, (3) Director, Directorate of Fisheries and (4) Chief Engineer, Water Resources Department; while the representative of the Dy. Collector, who is not a part of the GCZMA in terms of the Notification dated 26.10.2016 was also a part of the 191<sup>st</sup> Meeting.
11. When the notification specifically provided that the Respondent Authority was to consist of a specific individual, in the absence of a power to further delegate being conferred upon such an individual, none other than the said officer could have been a part of the Respondent Authority. Thus, in effect, only 5 members

were present at the 191<sup>st</sup> meeting of the Respondent Authority which does not meet the requirement of at least 2/3<sup>rd</sup> members of the authority (9 members).

12. This Hon'ble Tribunal in its order dated 04.04.2013 in *Sardessai Engineering Works v. GCZMA* Application No. 62/2012 while setting aside an order passed by the GCZMA has held, at para 16, that "*the minimum number of members of an organisation, fixed under any rule or bylaw, who must be present at a meeting for it business to be valid is a required quorum. In absence of such quorum of the meeting, the decision would be illegal.*" The aforesaid view was reiterated in the order dated 25.04.2013 in *Gurudas Amerkar v. GCZMA* Appeal No. 75/2012.

13. Hence this appeal ought to be allowed, and the impugned order must be quashed and set-aside.

  
Advocate for the Appellant

15.10.2020