

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH AT PUNE

APPEAL NO. 07OF 2023 [WZ]

BETWEEN:

The Colva Civic and Consumer Forum..**APPELLANT**

AND

The Goa Coastal Zone Management
Authority & ORS.**RESPONDENTS**

WRITTEN SUBMISSION DT 14.05.2024 OF THE APPELLANT

I. The subject property lies at approx 300 m from HTL on a secondary Sand Dune that extends in the North South direction in the CRZ III Zone in Sy. Nos 54/5 & 55/3 of Colva village [*See - Exh 'C' pages 36-37*]

II. **Impugned GCZMA order dt 09.12.2022 - has been challenged on two main grounds i.e.**

A) Structures put up illegally and **without any approval from any authorities**, in violation of approved plans of 07.04.1987, (*Refer LA 59/2023 pages 5,67*):

- I.A. 59/2023 - **Page 5** is the approval 2
- **Page 6** is the approved construction plan showing 5 ground floor structures;
- **Page 7** is the form placed in the ECC/EDC meeting. Point 7 reflects five small cottages, point 8- area of buildings 80 m2 each, point 10 - total area 400 m2.
- **Page 9** - Approval dt 23.06.1994. (Refer I.A 59/2023 pages 9, 11 & 12.) Construction plan for G+1 which shows two structures in sy no.54/5 as not allowed. There is no conversion Sanad.
- **Page 10** minutes of the meeting held on 27.04.94 “....proposed constructions are on existing sand dunes and in order not to disturb it was felt to stick to the earlier approval of Inter Ministerial Committee (IMC) and as per CRZ-III Regulations on the condition that the applicant should submit a written statement that the existing sand dunes will not be disturbed”.
- **Page 12 point 10-** the existing sand dunes should not be disturbed. Point 11 the proposal is approved to the extent of the earlier approval of cottages by IMC in its meeting held on 13.08.86.

All the new developments have been under taken after purchase of property by the present owners through Sale Deed dt 06.07.2017 (refer page 195 para 4 (d). and after **Occupancy Certificate dt 15.09.2001** was issued (refer page 204 & 220 Annex A-8).

Hence I submit that all the constructions carried out without approvals in sy. Nos 55/3 and 54/5 of Colva village in CRZ III after the grant of Occupancy Certificate 2001 are illegal and unauthorised and therefore must be demolished. 3

B) Impugned order does not deal with fresh constructions made during pendency of complaint proceedings. These constructions were pointed out to the Authority in the form of an affidavit/submissions dt.12.01.2023 paras 21-34, but have not been dealt with in the impugned order whatsoever. Hence prayer Clause 'B; and ' C ' are sustained

Refer CRZ Notification 2011 Regulation of Permissible activities 4.2 (i) procedure for clearance

II. Complaints dt 09.10.2018 (refer page Exh 'B' page 42) and dt 21.02.2020 (refer Exh 'E' page 42) were filed to the GCZMA.

i. Complaints filed to GCZMA that Resp 3 of illegal reconstruction, renovation and repair in Sy. Nos 54/5 & 55/3 of Colva village

ii. 14.08.2019 (LA.59 page 19) Complaint filed by local M.L.A. Mr. Churchill Alemao.

III. A.) Site Inspection Report of GCZMA dt 23.11.2018 9Exh 'C' page 36 – 37 paraphrased below

a. That as per CRZ Regulations new constructions permissible is only of G+ 1 with 33% F.A.R. Whereas the 5 units of G+2 structures constructed at site in the N-S direction are not permissible within 200-500 m of CRZ - III area and therefore a violation. Besides there are two other shades

constructed with a large platform beyond to accommodate a swimming pool having a smaller shade at the northern edge.

- b. It was also not known if permissions were obtained from GCZMA for the said constructions and or the repair and renovation.
- c. Further with respect to the sand dune, the western boundary of the plot which is sandy gives an impression of the remnant of the edge of the sand dune, and verification would be required.
- d. Even the repair and renovation of structures within 200-500m of CRZ -III area are not permissible without permission from GCZMA as doing it without permission from GCZMA amounts to a violation of CRZ Regulation. There is no provision for regularisation under the CRZ Notifications.

B). (refer Annexure A2 Colly page nos 277- 278) Satellite imagery (SI) shows the changes between the year 2003 and 2020

The changes seen between Satellite image dt 07.09.2003 wherein only 5 structures plus the illegal swimming pool [page 277] and Satellite image of year 2020 wherein there are 5 - Gr +2 plus several other structures in Sy 55/3 & 54/5 of Colva village [page 278].

IV). Show Cause Notice cum Stop Work Order dt 07.05.2019 Exhibit ' D' page 38 of Paper Book issued by the GCZMA

Issued on grounds of illegal constructions including G+2 structures (para 4 page 38), highly detrimental to coastal ecosystem (para 1 page 40), had not obtained prior approval from GCZMA for constructions (page 39 para 4) , was directed to stop all civil works at the site (page 40 para 2).

Civil works continued at site till issuing of the order dt 09.12.2022, in blatant violation of the Stop Work Order (refer photographs Exh 'I' page 53; pages 60 - 61 Exh 'M')

V). Second Site Inspection Report dt 04.02.2021(pages 48 - 52) with mapping of structures by DSLR on 21.05.2020(pages 46- 47) & (Exh 'Y' (page 300).

(Para 5 of report on page 49) states that

Sy.no	Approved structures	Offending Structures/violations
54/5	Swimming pool	<ol style="list-style-type: none"> 1. Stage 2. Shower room 3. Basement below swimming pool deck 4. Restaurant (pool side) 5. Fountain 6. Interlocking pavers on concrete base (part)
55/3	Five Gr+1 cottages (each having approx 106m2 of plinth area)	<ol style="list-style-type: none"> 1. Interlocking pavers on concrete base 2. STP 3. Generator Shed 4. Restaurant structure 5. Second floor of five G+1 structures 6. Porch 7. Security cabin

It is pertinent to note that (refer para 9 of report on page 51) the important points are paraphrased herein

i). the GSCCE approved extension of first floor on the five cottages, but did not approve construction of a swimming pool and two g+1 cottages marked as 'not allowed'. This conclusion is **fortified by the fact that conversion sanad was not obtained** and no such document found in records in sy. No 54/5. Confirmed in CTP's order no DJ/1520/TCP/94/2235 dated 23.06.1994 which approved to the extent of the earlier approval of cottages by the Inter Ministerial Committee in the meeting held on 13.08.1986.

ii). condition no 10 of order dt 23.06.1994 states 'the existing sand dunes should not be disturbed. (refer 'O' Colly page no -12 of I.A.59/2023) and (Exh 'L' page 59 para 2)

iii). Notings in file No DJ/5120/GSCCE reference to Site Inspection on 25.10.2000 on applicants request for Occupancy Certificate only five cottages there is no reference to a swimming pool on site on the date. Director of STE conveys No objection for only five cottages/structures.

I submit (refer Exh. 'K' page nos 57 & 58) page 57 – NOC issued to five cottages/structures (Page 58, Para 2) Noting sheet 3, site inspected on 25.10.2000, 5 cottages constructed as approved, however it was noticed that the structures have flat roof accordingly the applicant was instructed to change it into 'sloping roof'. The applicant has agreed to do the same.

VI). Regarding discharge of Show Cause Notice dt 07.05.2019 ⁷ (refer pages 38 - 41)

It is Submitted that the order dt 09.12.2022 does not deal with all the unauthorized constructions on sy. Nos 55/3 & 54/5 of Colva village

- i. does not deal with the fact that all the civil works have been carried out during the pendency of the Complaint proceedings till order dt 09.12.2022 despite the SCN cum Stop Work Order.
- ii. That after the Occupancy Certificate was issued on 15.09.2001 (refer page 220 Annex A-8) the Resp 3 carried out repair, reconstruction including all fresh constructions without any approvals from any authorities
- iii. does not refer that Conversion Sanad was granted only to Sy. No 55/3 and not to Sy. No 54/5, (refer Exh A-5 page 185-186) ,
- iv. does not direct demolition of unapproved second floor of the five cottages some of which are now covered on all sides, flat roofs of first floor should have had sloping roofs.
- v. does not direct demolition of the extension of each cottage approved for only 80 sqm (refer to II-A above for details) (refer to I.A. 59/2023 page 7 point 8 & 10 & page 5- 6) which site inspection report states is 106 sqm (refer table para 5 page 49) are now which are more than 160sqm each (refer to page nos 310-311)

- vi. does not direct demolition of Restaurant (Exh 'J' pages 54 -56 para 3) approved area of 98 sqm is now extended to 180sqm. (refer to pages 161(photo) & page 298 point 7 of Table)
- vii. does not direct demolition of Generator Shed approx. 60 sqm. (refer page 298 point 9)
- viii. does not direct demolition of swimming pool approx area of 550 sqm (refer Photo on page nos 165,166,167,169,170, 171, 172 & 173 Table page 298 point 12)
- ix. Does not deal with unauthorized water well constructed in 2017 (refer satellite image Jan 2017 Exh 'Z' Colly page 310) in sy. No 54/5 which is used for commercial purposes and is a banned activity as per CRZ Notification. [Refer photo page 175 & page 183 point (v)] despite the Office Memorandum dt 23.09.1988 on page 183, point (v) "Ground water must not be tapped for any purpose for the complex as there is likelihood of ingress os saline wter and consequent pollution of ground water".
- x. Does not direct demolition of STP room approx ares of 45 sqm (refer photo Exh 'Z' Colly page 164 & Table page 298 point 8)
- xi. EDC in its 4th meetings dt 27.04.94 held that IMC New Delhi on 13.08.1986 granted approval for 5 cottages only of 80sqm each of ground floor only sloping roofs/mangalore tiles (refer page 10 of I.A. 59/2023)

VII). The Hon'ble National Green Tribunal directed vide order dt 21.02.2023 para 11 – 13 to conduct a joint inspection 9

The Joint site Inspection reports dt 24.03.2023.

i). The report of Joint inspection (refer page no para 2, The Table 1.0 states first box “ Demolition order as per NGT” and second box states “Site conditions as on date 24.03.2023 these are falsely attributed title/headings which are misleading. The Hon'ble NGT has nowhere in its order mentioned a demolition order. It is a fact that the report reflects **ONLY** the structures mentioned in the order dt 09.12.2022 The report has clearly **failed** to mention the **second floor** of the five structures It is unfortunate that the second Site Inspection report dt 03.05.2023 has toed the line of the report dt 24.03.2023.

I submit that the Experts refused to take into account additional structures/violations which are subject of my appeal and **failed** to register all the violations including the second floor of the five buildings and the measurements of each structure and other violations. (Refer to affidavit dt 30.05.2023 pages 152-187-A. AND Affidavit dt 09.08.2023 pages 269-287

Photographs taken at the site (photos from page no 158 – 175) and Analysis of Satellite Imagery submitted as ‘Z’ Colly pages 304, 308,309,310,311-312 show the area extensions and several violations (Satellite image Z Colly page 304 satellite image dt 23/12/2022 the box highlighted in yellow outline shows all structures in 54/5 and the box outlined in white colour all structures in 55/3 sy. Nos. page No 308 shows the changes between Feb 2010- March 2014 and March 201- Nov. 2018. Page 311 Satellite image dt 23.12.2022 shows area calculated on google

imagery as was **legally approved** area 80 X 5 cottages = 400 sqm X 2 = 800sqm in 1987 & 1994

- Area consumed in Plot 54/5 total **illegal area was 550+ 180 + 100 = 830 sqm**
- Area consumed in Plot 55/3 total **illegal area was 40+630+540+600+570+540 +180+45+ 60 = 3,205 sqm**
- 830 + 3205 = 4035 – 220 [(demolished 180(E1) +40 (A1)]
- **4035 -220 - 800 = 3015 sq m of illegal area consumed** (*refer to pages 311-312 of Exh ' Z' Colly*) which detail out the areas of each of the structures this Appellant relies on .

ii). **With respect to objections raised by this Appellant to the Site Inspection reports dt 24.03.2023 and 03.05.2023** which did not record all the violations which should have been included in the said reports I rely on the Hon'ble High Court Order dt 14.01.2020 (*para 7, page 286 Annex A-4*) which states that "...In fact the GSCZMA authorities goes for inspection and if they notice any violation under the GSCZMA, the law requires that they take cognizance of any such act and under such law.." **Emphasis relied & supplied on the Relevant pages**

iii). With respect to reliance by this Appellant on Satellite Imagery and the details including the progress of illegal constructions in sy. Nos 55/3 & 54/5 of Colva Village in CRZ - III

iv). I herein rely on the Judgements of the Hon'ble Supreme Court in

1). Vamika Island (Green Lagoon Resort) Vs Union of India (Radhakrishnan J.) SLP'S (c) Nos 24390-91 of 2013 dt 08.08.2013. Page

767 para 24 last three lines state "..... Satellite imagery also, in our view, is one of the best scientific indicators to know, when was the construction effected in violation of CRZ which, in our view, has been correctly applied in this case". **Emphasis relied & supplied on the Relevant pages**

2). Writ Petition (s) (Civil Nos(s) 4677/1985 in M C Mehhta Petitioners Vs Union of india & ORS Respondent(s)

“ SATELLITE MAPPING TO DETECT ENCROACHMENTS OF LANDS

The matter has been placed before us as per our directions because the aspect of Satellite mapping and Geo Fencing is extremely important considering that the unauthorized construction is perennial problem. It is necessary that the modern technologies for Satellite mapping of lands and buildings to detect encroachments and unauthorized/illegal constructions and Geo fencing of land/ premises for prompt monitoring and control takes place. On analysis of the matter, we find that in order to detect encroachment of land, preliminary requirement was conducting satellite mapping of lands and Digitisation of Cadastral Maps which apparently has already been completed in the Union Territory of Delhi under Digital India Lands Records Modernization Programme (DILRMP). The next requirement to obtain High Resolution Satellite Imagery of the area from Indian Remote Sensing Agency (IRSA) or other external sources such as Google. The alternate apparently is that the areial photography by engaging services of drone fitted with high precision cameras as areial photography through high resolution drones are purported to be superior to that which are readily available through Satellite Imagery pictures”.

Emphasis relied & supplied on the Relevant pages

12

VIII Consent by the Pollution Control Board

The R3 has relied on the Consent to Operate dt 03.08.2019 from the GSPCB to buttress its attempt to follow the laws in place but has concealed the fact that the GSPCB issued directions dt 18.12.2019 asking R3 to rectify the STP and has in fact issued directions to Stop Operations on 26.02.2020 and has issued direction dt 12.01.2024 why Environmental Compensation to the tune of over 63 ,10,000 is not to be imposed.

For all the above reasons, this Appellant prays that all the structures illegally renovated, reconstructed and fresh constructions including the well used for commercial withdrawal of ground water constructed in survey nos 55/3 & 54/5 without approvals should be directed to be demolished, land be restored, Sand Dunes be restored under supervision of a Scientific body and Environment Compensation be imposed for severe damage to the environment.

Margao- Goa

14.05.2024


DEPONENT



13

Writ Petition No. 1105 of 2019

Minguel Caetano Do Rosario Vaz v. Goa State Coastal Zone Management Authority

2020 SCC OnLine Bom 63

In the High Court of Bombay at Goa
 (BEFORE M.S. SONAK AND M.S. JAWALKAR, JJ.)

Minguel Caetano Do Rosario Vaz Petitioner;
 v.

Goa State Coastal Zone Management Authority, Thr. its Member
 Secretary and Others Respondents.

Writ Petition No. 1105 of 2019

Decided on January 14, 2020

Advocates who appeared in this case:

Mr. Jitendra P. Supekar with Mr. Sufiyan Sayed, Advocates for the petitioner.

Mr. Manish Salkar, Government Advocate for the respondents no. 1 and 2.

Mr. Parikshit Sawant, Advocate for the respondent no. 3.

The Judgment of the Court was delivered by

M.S. SONAK, J.:— Heard Mr. Jitendra Supekar, the learned Counsel for the petitioner, Mr. Manish Salkar, the learned Government Advocate for the respondents no. 1 and 2 and Mr. Parikshit Sawant, the learned Counsel for the respondent no. 3.

2. Rule is made returnable forthwith, at the request of and with consent of the learned Counsel for the parties.

3. The basic grievance of the petitioner is that the respondent no. 3 has carried out certain unauthorized structures within the area covered under the Coastal Regulation Zone (CRZ) Notification 2011, as amended from time to time. It is the case of the petitioner that despite his filing complaints, no action was being taken by the respondent no. 1, the Goa State Coastal Zone Management Authority (GSCZMA), which is duty bound to take action in terms of the law.

4. The respondent no. 3, has denied that any illegal construction has been put up and maintains that whatever structures have been put up are in accordance with the permissions/NOC's granted by such authorities.

5. Since, the complaint was that the GSCZMA was not taking any action, we direct the GSCZMA to inspect the site. The site was ultimately inspected on 7/1/2020 and 9/1/2020. Mr. Salkar, the learned Government Advocate, has now placed before us a copy of the Site Inspection Report. He states that the said Inspection Report thus indicate prima facie some illegalities and the GSCZMA will issue a Show Cause Notice to the respondent no. 3 as well as certain other parties in relation to the illegal structures at the site. Mr. Salkar, the learned Government Advocate, states that the Show Cause Notice will be issued within a period of three weeks from today and the same will be disposed of as expeditiously as possible and in any case within a period of three months from today.

6. The respondent no. 3 complains that even the petitioner has put up some illegal structures at or around the site. The GSCZMA is directed to inspect the site and if, the petitioner or any of his relations have put up any illegal construction at the site the GSCZMA are entitled to take action as well.

7. In fact the GSCZMA authorities goes for inspection and if they notice any violation under the GSCZMA, the law requires that they take cognizance of any such



The sweet way to legal research!

14

act and under such law.

8. We clarify that the GSCZMA must comply with the principles of natural justice and fair play, while taking action against any illegalities pointed out to them. The principles of natural justice and fair play will have to be complied with the present case as well.

9. In the facts of this particular case, we direct that even the petitioner is heard by GSCZMA when hearing is offered to the respondent no. 3. However, we make it clear that if the petitioner fails to remain present or otherwise seeks any adjournments, then, the GSCZMA shall not delay its action. Mr. Jitendra Supekar, the learned Counsel for the petitioner states that if ultimately the petitioner's complaint is found to be false and there are no illegalities committed by the respondent no. 3 as alleged or even otherwise, the petitioner will pay costs of Rs. 10,000/- in favour of GSCZMA. This statement is accepted.

10. This petition is disposed of with the aforesaid directions. There shall be no order as to costs.

11. All concerned to act on the basis of an authenticated copy of the Order.

Disclaimer: While every effort is made to avoid any mistake or omission, this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification is being circulated on the condition and understanding that the publisher would not be liable in any manner by reason of any mistake or omission or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification. All disputes will be subject exclusively to jurisdiction of courts, tribunals and forums at Lucknow only. The authenticity of this text must be verified from the original source.

760

SUPREME COURT CASES

(2013) 8 SCC

(2013) 8 Supreme Court Cases 760

(BEFORE K.S.P. RADHAKRISHNAN AND A.K. SIKRI, JJ.)

VAAMIKA ISLAND (GREEN LAGOON
RESORT)

Petitioner;

Versus

UNION OF INDIA AND OTHERS

Respondents.

SLPs (C) Nos. 24390-91 of 2013[†], decided on August 8, 2013

A. Environment Protection and Pollution Control — Coastal areas — Critically vulnerable coastal areas (CVCA) — Vembanad Lake and its islands in State of Kerala (Kerala backwaters) — Protection of its ecological resources from progressive encroachment/human intervention and environmental degradation — Directions passed by High Court for demolition of illegal constructions in one of the islands of said Lake, held, are justified in larger public interest — Said Lake has been declared to be an ecological sensitive area both nationally and internationally — Constitution of India — Arts. 21, 14, 226, 48-A and 51-A(g) — Protection of critically vulnerable coastal areas from illegal constructions — Demolition order of High Court, upheld (Paras 27 to 29)

B. Constitution of India — Arts. 136, 226, 21, 14, 48-A and 51-A(g) — Illegal constructions in prohibited areas i.e. CRZ I area — Factual findings regarding said constructions, held, cannot be interfered with by Supreme Court (Para 26)

C. Environment Protection and Pollution Control — Coastal areas — Critically vulnerable coastal areas (CVCA) — Prohibition of construction in coastal areas of Kerala notified as CRZ I having ecological and marine resources — Petitioner's property falling in CRZ I area as per map prepared by Kerala Coastal Zone Management Authority (KCZMA) — Challenge to said map on ground that petitioner's properties were wrongly included in said map — Tenability — KCZMA preparing map by following guidelines of MoEF, by adopting all scientific methods and expert data available i.e. maps prepared by Survey of India and Survey Deptt. of Kerala — KCZMA also relying on satellite imagery — Held, there is no illegality in map prepared by KCZMA and technique employed by it to prepare the map for ascertaining illegal constructions in prohibited areas — High Court was also right in not finding any illegality in the adoption of salinity test (even if said test was incorporated in 2002 i.e. after the preparation of maps) — Order of demolition given by High Court, therefore, needs no interference — Constitution of India — Arts. 21, 14, 48-A and 51-A(g) — Critically vulnerable coastal areas (CVCA) — Map prepared by experts including petitioner's properties in CVCA — Validity — Environment (Protection) Act, 1986, Ss. 3(1) and (3) (Paras 11, 17 and 21 to 29)

[†] From the Judgment and Order dated 25-7-2013 of the High Court of Kerala at Ernakulam in WP (C) No. 8299 of 2012 and WP (C) No. 2947 of 2013

17

766

SUPREME COURT CASES

(2013) 8 SCC

1991 Notification, the entire coastal stretch from the lowest low tide to highest high tide line and the coastal land within 500 m from the high tide line on the landward side is termed as CRZ. CRZ is classified into four categories depending on the sensitivity of the zones and prohibited and regulated activities have been listed for each zone. Later, a Notification dated 18-8-1994 was issued making six amendments to the main notification and those were made on the basis of the report submitted by the B.B. Vohra Committee which was set up by the Central Government. It was noticed that having issued the main notification, no follow-up action was taken either by the coastal States, Union Territories or by the Central Government. The provisions of the main notification appeared to have been ignored and violated with impunity and there was complete laxity in the implementation of the Act and other related statutes including the preparation of the coastal management plans by the various coastal States.

a
b
c
d
e
f
g
h

19. In *Indian Council for Enviro-Legal Action v. Union of India*² this Court elaborately dealt with the scope of CRZ I, CRZ II, CRZ III and CRZ IV and noted with concern the delay on the part of the various States in not implementing the main notification as well as not preparing the coastal management plans for proper implementation of the 1991 as well as 1994 Notifications. The Court directed the Central Government to set up under Section 3 of the Environment (Protection) Act State Coastal Management Authorities in each State or zone and also National Coastal Management Authority.

20. The Central Government, following the directions given by this Court in *Indian Council for Enviro-Legal Action case*² as well as in exercise of its powers conferred by sub-sections (1) and (3) of Section 3 of the Act, constituted KCZMA vide its Notification dated 21-7-2008 which was published in the Gazette of India, Extraordinary, Part II. The Authority has been entrusted with the power to examine the proposals for changes or modification in classification of CRZ areas and in CZMP received from the State Government and to make specific recommendations to the National Coastal Zone Management Authority. It has also the power to deal with environmental issues relating to CRZ which may be referred to it by the State Government, the National Coastal Zone Management Authority or the Central Government. The Authority is also entrusted with the power to identify ecologically sensitive areas in the CRZ and to formulate area-specific management plans for such identified areas. The Authority is also empowered to identify coastal areas highly vulnerable to erosion or degradation and formulate area-specific management plans for such identified areas. The Authority is further obliged to submit the plans prepared by it to the National Coastal Zone Management Authority for examination and its approval. Various other powers have also been entrusted to KCZMA by the abovementioned notification.

VAAMIKA ISLAND (GREEN LAGOON RESORT) v. UNION OF INDIA
(Radhakrishnan, J.)

767

- 21.** CZMP 1995 of the State shows the entire Vettila Thuruthu as FP (Fig.1: Map No. 32-A of CZMP). CZMP described FP as: another fish spawning/breeding ground and these are shallow water bodies adjoining the backwater system where certain species of fish are grown in large numbers. The 50 m belt adjoining it is also demarcated as CRZ I, since this area is low lying, it is likely to be inundated due to sea level rise (SLR). Hence, the entire Vettila Thuruthu is described as CRZ I as per 1991 Notification and, as per 2011 Notification, it is described as either CRZ I, CRZ III or CRZ IV. New constructions are not permitted in CRZ I, the no-development zone of CRZ III and in CRZ IV. Repairs of existing structures can be permitted in no-development zone of CRZ III subject to conditions for permissible activities as per the notification. Tourism activity is also not permitted in the no-development zone of CRZ III or CRZ I.
- 22.** CRZ for Kerala in CRZ 2011 also prohibits new construction within 50 m from high tide line and only dwelling units of local communities could be repaired or reconstructed.
- 23.** KCZMP was prepared, as already indicated, based on the guidelines of MoEF, taking care of the maps prepared by the Survey of India (Government of India) and cadastral maps prepared by the Survey Department of Kerala Government were used as base map for preparation of CZMP of the State. The area between low tide line and high tide line is also CRZ I. The FPs, as already indicated, are shallow water bodies which are spawning/breeding area of fishes and hence, as per notification, they are CRZ I.
- 24.** CRZ 2011 has been made applicable with effect from 6-1-2011. CZMP is being prepared on CRZ 2011, at that time the plan prepared on the basis of the 1991 Notification would be "in force". Coastal plan prepared on the basis of the 1991 Notification clearly shows Vettila Thuruthu as "FP". We do concur with the view of the High Court that islands could be coastal stretches of river or backwater or backwater islands in Kerala are clearly covered by CRZ I. It cannot fall under either CRZ III or CRZ IV. We also fully endorse the view of the High Court that even before the salinity test was incorporated in the year 2002, reliance was placed on that test, on the basis of 5 ppt, which was made as per standard measurements technique in parts per thousand. Satellite imagery also, in our view, is one of the best scientific indicators to know, when was the construction effected in violation of CRZ which, in our view, has been correctly applied in this case.
- 25.** We, therefore, find no illegality in the map prepared by KCZMA as well as the techniques employed to ascertain that works/constructions have been made in violation of CRZ 1991 as well as 2011.
- 26.** The petitioner had effected the construction in violation of the provisions of 1991 and 2011 Notifications as well as Map No. 32-A, so found by the High Court. The factual details of the same and where actually the portion of some of the properties of the petitioner in Vettila Thuruthu will

768

SUPREME COURT CASES

(2013) 8 SCC

fall, has been elaborately dealt with by the High Court in its judgment in paras 109 to 119. We notice that the High Court has dealt with the issue pointing out that so far as buildings which have been constructed by the petitioner during the currency of the Notification issued in 1991 are concerned, they are clearly in violation of this notification, hence, action has to be taken for the removal of the same. The Director of Panchayat also vide letters dated 7-3-1995, 17-7-1996 directed all the panchayats to strictly follow the provisions of CRZ notification which it was found not followed by granting permission. The High Court has also found on facts that reconstruction work appeared to have been done during the currency of the 2011 Notification and two buildings (193/D and 193/E) were also constructed illegally. The High Court has also noticed another new construction underway. These all are factual findings which call for no interference by this Court. The High Court has clearly noticed that reconstruction work has been done contrary to the 1991 as well as 2011 Notifications and the report of the Expert Committee constituted by the Kerala State Committee on Sciences Technology and Environment (KSCSTE) was accepted.

27. We are of the considered view that the above direction was issued by the High Court taking into consideration the larger public interest and to save Vembanad Lake which is an ecologically sensitive area, so proclaimed nationally and internationally. Vembanad Lake is presently undergoing severe environmental degradation due to increased human intervention and, as already indicated, recognising the socio-economic importance of this waterbody, it has recently been scheduled under “vulnerable wetlands to be protected” and declared as CVCA. We are of the view that the directions given by the High Court are perfectly in order in the abovementioned perspective.

28. Further, the directions given by the High Court in directing demolition of illegal construction effected during the currency of the 1991 and 2011 CRZ Notifications are perfectly in tune with the decision of this Court in *Piedade Filomena Gonsalves v. State of Goa*³, wherein this Court has held that such notifications have been issued in the interest of protecting environment and ecology in the coastal area and the construction raised in violation of such regulations cannot be lightly condoned.

29. We, therefore, find no reason to interfere with the judgment¹ of the High Court. The special leave petitions are accordingly dismissed.

3 (2004) 3 SCC 445

1 *Vaamika Island Resorts (P) Ltd. v. Union of India*, WP (C) No. 2947 of 2013, decided on 25-7-2013 (Ker)

ITEM NO.42

COURT NO.3

SECTION PIL-W

20

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Civil) No(s). 4677/1985

M.C.MEHTA

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(MATTER IS LISTED ONLY FOR DIRECTIONS ONLY NAMES OF FOLLOWING ADVOCATES MAY BE TREATED TO HAVE BEEN SHOWN IN THE LIST :MR. S GURU KRISHNA KUMAR, SR. ADVOCATE (A.C.) MS. ANITHA SHENOY, SR. ADVOCATE (A.C.)MR. A.D.N. RAO, SR. ADVOCATE (A.C.)PETITIONER-IN-PERSON MR. G.S. MAKKER,MR. AMRISH KUMAR,MR. PRAVEEN SWARUP, MR. NISHIT AGRAWAL,MR. CHIRAG M. SHROFF, ADVOCATES)

Date : 30-09-2022 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE ABHAY S. OKA

Mr. S. Guru Krishna Kumar, Sr. Adv. (A.C.)
Mr. A.D.N. Rao, Sr. Adv. (A.C.)
Ms. Aarti Krupa Kumar, Adv.

Ms. Anitha Shenoy, Sr. Adv. (A.C.)
Ms. Aarthi Krupa Kumar, Adv.
Ms. Ayushma Awasti, Adv.
Ms. Namrata Sarah Caleb, Adv.

For Petitioner(s) Petitioner-in-person

For Respondent(s) Ms. Aishwarya Bhati, Ld.ASG
Ms. Suhasini Sen, Adv.
Mr. Rajesh K Singh, Adv.
Mr. Rajat Nair, Adv.
Mr. S.S. Rabello, Adv.
Ms. Swarupama Chaturvedi, Adv.
Ms. Ruchi Kohli, Adv.
Ms. Sakshi Singh, Adv.
Ms. Kirti Khangarot, Adv.
Ms. Shagun Thakur, Adv.
Mr. G.S. Makker, AOR
Mr. Amrish Kumar, AOR
Mr. Arvind Kumar Sharma, AOR

Mr. Sanjiv Sen, Sr. Adv.
Mr. Praveen Swarup, AOR

Mr. Nitin Mishra, AOR

Ms. Supriya Jeneja, AOR

Mr. Mantavya Sharma, Adv.

21

UPON hearing the counsel the Court made the following
O R D E R

// SATELLITE MAPPING TO DETECT ENCROACHMENTS OF LANDS

The matter has been placed before us as per our directions because the aspect of Satellite mapping and Geo fencing is extremely important considering that the unauthorized construction is a perennial problem. It is necessary that the modern technologies for Satellite mapping of lands and buildings to detect encroachments and unauthorized/illegal constructions and Geo fencing of lands/premises for prompt monitoring and control takes place.

On analysis of the matter, we find that in order to detect encroachment of land, a preliminary requirement was conducting satellite mapping of lands and Digitization of Cadastral Maps which apparently has already been completed in the Union Territory of Delhi under Digital India Lands Records Modernization Programme (DILRMP).

The next requirement is to obtain High Resolution Satellite Imagery of the area from Indian Remote Sensing Agency (IRSA) or other external sources such as Google. The alternative apparently

is that the aerial photographs by engaging services of drone fitted with high precision cameras as the aerial photography through high resolution drones are purported to be superior to that which are readily available through Satellite Imagery pictures.

The next step would be a Geo fencing of the Digitalized Cadastral Maps and High Resolution Satellite Imagery (of all aerial photography) by fixing reference points along the boundary of the areas selected for Mapping. Such reference points are fixed by using Electronic Total Station (ETS) and Differential Global Positioning System Equipment (DGPS) and the number of such points shall vary, depending on the area to be mapped and the topography.

Once the aforesaid two exercises are completed, the Geo reference maps are superimposed on each other to obtain changes/variations of ground realities from the Land Revenue records. Proper alignment of the Geo referenced Digitalized Cadastral Maps and Satellite Imagery/aerial photography after allowing for permissible variations between the two, shall provide the necessary details regarding encroachments.

UNAUTHORIZED/ILLEGAL CONSTRUCTION

The area development plans of the area are to be mapped which are made available by the Delhi

Development Authority (DDA). Geo reference of the area selected for mapping to detect unauthorized/illegal constructions is to take place in terms of what we have expounded aforesaid and services of drone fitted with high precision cameras to take 3D pictures of the entire area for the selected survey. These aerial photography obtained from the Drone shall be superimposed on the Geo reference area development plans to detect unauthorized usage of lands for construction within the permissible zone. The aerial photography obtained from the drone needs to be verified with individually with the approved building plans by the DDA.

ILLEGAL OCCUPATION OF LANDS/PREMISES

Geo fencing is widely used for various purposes including surveillance/monitoring of selected areas/premises requiring constant vigil and care and it would possibly be ideally used in the cases of water bodies, forests, mining areas etc. which require regular monitoring to prevent various illegalities such as encroachments, illegal mining etc. Geo fencing of premises/lands is possible only after coordinates of the selected areas/premises are available through Geo reference.

We understand that there is a Government of India funded scheme for Presentation on Digital India Land Records Modernization Programme dated 11.01.2016. It appears that there has been very little use effectively by the States and the UTs, for obvious reasons. By adopting the technologies and the schemes of the Government of India the scope of human intervention is decreased and consequently the monetary intervention.

We are of the view that the aforesaid must be implemented at the earliest and a status report in respect of the aforesaid filed before us by the concerned authorities within four weeks from today.

List on 14.11.2022.

At this stage, learned Amicus points out that in terms of our order dated 13.09.2022, space had to be arranged for the Judicial Committee of Judges appointed by us within two weeks and that nothing has happened till date. Learned ASG to ensure that the needful is done by the concerned within a week on the pain of contempt.

The Amicus is permitted to place the consolidated list of applications sought to be transferred to the Judicial Committee appointed in pursuance to further work done by them.

Learned Amicus points out that in terms of the directions by this Court dated 26.07.2022/13.09.2022,