

**BEFORE THE NATIONAL GREEN TRIBUNAL SITTING AT PUNE
APPEAL NO. 20 OF 2022**

Paul Lobo and Ors).... Appellants
Versus
Goa Coastal Zone Management Authority and Anr)...Respondents

WRITTEN SUBMISSIONS ON BEHALF OF THE APPELLANTS

The Appellants herein have been constrained to file the present Appeal challenging the impugned directions issued by the Respondent GCZMA on 03.03.2022 under Section 5 of the Environmental (Protection) Act 1986. The Appellants are aggrieved by the directions issued therein, whereby the Respondent GCZMA has admitted and acknowledged that the Respondent Project Proponent has been illegally cutting, excavating and filling sand dunes protected under the CRZ Notification of 2011 contrary to the conditions of the CRZ clearance dated 20.10.2015 granted to the Project Proponent, but has failed to revoke the CRZ Clearance granted by the Respondent GCZMA to the Project Proponent and have also failed to uphold the provisions of the CRZ Notification of 2011.

LIST OF DATES

DATE	PARTICULARS	PAGE NOS
28.06.2000	Environmental Clearance was issued by the MoEFCC for a hotel project to be constructed by the Respondent No. 1 on survey no 134/3, Cavellosim Village, Salcette Taluka Specific Condition No (v) noted that, <i>“any change in project profile including alteration or addition of rooms etc. shall be notified to this Ministry and prior approval of the same shall be maintained”</i>	Page 933-934 Affidavit of the Respondent No. 1 dated 12.01.2023
30.04.2015	In a site inspection done by the GCZMA, the site of the construction of the hotel beyond the 200 mtr of the High Tide Line (“HTL”) was recorded as being a, “coastal strip” and “a sand dune complex” with dune vegetation and creepers during a site inspection done by the Respondent GCZMA	Page 59-62 of the Appeal Paper Book
20.10.2015	The Respondent No. 1 -GCZMA, while citing Regulation 8 and Annexure III of the CRZ	Page 63-67 of the Appeal Paper Book

	<p>Notification, 2011 granted a CRZ clearance to the Respondent No. 2 for proposed construction of hotel/resort on the land bearing Survey no 134/3 in Cavelossim Village, Salcete Taluka, Goa vide a letter No. GCZMA/S/15-16/09/1775. The Clearance noted that the project Area falls within CRZ-III land.</p> <p>Specific Condition 11 required that all requisite environmental safeguard would have to be taken by the Project Proponent and that no environmental degradation could occur in the area</p> <p>Specific Condition No 12 prohibited the flattening of sand dunes, cutting of mangroves vegetations</p> <p>Specific Condition no 3 mandated strict compliance with the CRZ Notification of 2011.</p> <p>General Condition No. (vii) provided that the Condition could be revoked if there was a breach of the conditions stipulated therein</p> <p>General Condition No (ix) said that the permission was valid for 5 years</p> <p>Vide its affidavit dated 10.10.2023 in the present Appeal, the Respondent No. 4 MoEFCC has stated that as per Regulation 8 (i) III. CRZ-III, - B(I), CRZ Notification, 2011 read with the Guideline No.I, of the Guidelines at Annexure III of the CRZ Notification, 2011, the CRZ clearance of that project would have to be issued by the MoEFCC and not the GCZMA but the MoEFCC has not received an application for a CRZ Clearance for the project.</p>	<p>Page 65 of the Appeal Paperbook</p> <p>Page 64 of the Appeal Paperbook</p> <p>Page 67 of the Appeal Paperbook</p> <p>Para 8,9, 10 and 11 page 993 to 994 of the Affidavit of the Respondent No. 4</p>
03.03.2021	<p>The Appellants filed OA 28/2021 before the Western Zone Bench of the Hon'ble NGT seeking directions to the Goa Coastal Zone Management Authority to revoke the CRZ clearance 20th October, 2015 granted in</p>	<p>OA copy at Page 69-102 of the Appeal Paperbook Prayers are at Page 97-98</p>

	favour of the Respondent No. 2 M/s. Nova Resorts Pvt. Ltd. on plot bearing Survey No. 134/3 in Cavelossim Village, Salcete Taluka, Goa.	
16.08.2021	The Hon'ble NGT was pleased to dispose of Original Application No 28 of 2021 directing the Respondent no. 1 GCZMA to look into the matter in the first instance and determine, after considering the rival viewpoints, whether there are violations warranting revocation of the permission granted on 20.10.2015.	Page 103-195 of the Appeal Paperbook Page 104 has the relevant findings
08.11.2021	A site inspection was performed on 08.11.2021 by the two expert members of Respondent GCZMA in the absence of any other authorities or officials.	Page 106-119 of the Appeal Paperbook
17.11.2021	The two expert members prepared an Inspection Report on 17.11.2021 with numerous flaws and contradictions but which noted the following <ol style="list-style-type: none"> 1. The CRZ Permission of the GCZMA dated 20.10.2015 was valid for 5 years and floor area of the project was 5774.71 m² [para 4 page 106] 2. Filling of low lying area was done with construction debris [sr no.1 of the table at page 107] 3. A portion of sand dunes identified by the NCSCM in the Draft CZMP has been cut for widening of an existing road which was 5 m wide and was to be widened to be 10m road as per the plans approved by the GCZMA [sr no 2 of the table at page 107] 4. Cutting of Sand dunes was also recorded in the images prepared by the members of the GCZMA at the end of its inspection report [page 114 and 118 of the Appeal Paperbook and page 114 and 118 of the List of Documents (coloured images)] 	Page 106-119 of the Appeal Paperbook Page 113 of the Appeal Paperbook

	<p>submitted by the Appellants]</p> <p>5. Another portion of sand dune has been cut to enable construction of public access to the beach. The total area of sand dunes is 1100m² [Sr no 2 of the table at page 107]</p> <p>6. There were paddy fields observed at the southern side of property [Sr no 3 of the table at page 107-108]</p> <p>7. There were low-lying areas admeasuring about one Ha in area on the southern side on the adjoining property bearing CTS No 134/4 which was surrounded on 3 sides by sand dunes [Sr no 3 of the table at page 108]</p> <p>8. Metal sheets erected on the eastern side of the property which had cement/concrete foundations and MS channels along the northern and southern boundaries obstructed public access to the beach and had been constructed without permission and would need to be removed [Sr No 4 of the table at page 109 and recorded at Finding and Recommendation No. 9 and 10 on page 109]</p> <p>9. The breaches recorded by the members of the GCZMA did not warrant revocation of permission granted to the PP [Finding and Recommendation No. 9 and 10 on page 109]</p>	
03.03.2022	<p>The Respondent No. 1 GCZMA issued the impugned directions on 03.03.2022 under Section 5 of the Environmental (Protection) Act 1986. The Appellants are aggrieved by the directions issued therein, whereby the Respondent GCZMA has admitted and acknowledged that the Respondent Project Proponent has been illegally cutting, excavating and filling sand dunes protected</p>	<p>Page 54-57 of the Appeal Paperbook</p> <p>[findings are at the end of page 56 and page 57 of the Appeal Paperbook]</p>

	<p>under the CRZ Notification of 2011 contrary to the conditions of the CRZ clearance dated 20.10.2015 granted to the Project Proponent, but has failed to revoke the CRZ Clearance granted by the Respondent GCZMA to the Project Proponent. The directions also recorded that both the Appellant and Respondent had agreed that construction for the project had not properly started at the time. [end of second para at page 54 of the Appeal Paperbook]</p>	
19.04.2022	<p>At the 299th meeting of the GCZMA GCZMA noted that they had received a revised proposal for the construction of the hotel project from the project proponent. The GCZMA itself noted that the hotel project will necessarily destroy at least 1100m² of sand dunes and wrongfully seemed inclined to permit the destruction of the sand dunes on Survey No.134/3 in contravention to the aforementioned conditions of the CRZ clearance granted to this project by citing some potential compensatory development of sand dunes elsewhere. It is to be noted that there is no enabling provision in the CRZ Notification of 2011 which allows compensation/shifting of sand dunes cut and destroyed. In fact Guideline No I(d) in the <i>Guidelines for development of Beach Resorts or hotels in the designated areas of CRZ-III and CRZ-II for occupation of tourists or visitors with prior of Approval of the Ministry of Environment and Forests</i> at Annexure III of the CRZ Notification of 2011 categorically prohibits flattening of sand dunes.</p> <p>The Respondent GCZMA further once again asked for revised plans for the hotel project, thereby enabling the Respondent Project Proponent to construct the hotel project on the sand dunes, instead of correctly exercising its powers to revoke the CRZ clearance previously granted to the project.</p>	<p>Page 166-186 of the Appeal Paperbook</p> <p>Relevant portions are at page 183-185</p>

May 2022	The Appellants filed the present Appeal	
29.04.2022	<p>The Respondent No. 1 GCZMA approved the revised plans for the project submitted by the Respondent No. 2 and evidently renewed the previous CRZ Clearance issued to the project on 20.10.2015 to the Respondent No. 2 <i>while citing para 8 of the CRZ Notification of 2011 and reiterating the terms and conditions of the CRZ clearance of 20.10.2015 would continue and must be strictly complied with.</i></p> <p>The Revised Plans still show that a portion of the construction for the hotel project will continue within the sand dune region, and further, the construction activity of the hotel will necessarily destroy the sand dunes in the region.</p>	<p>Page 1162 of the Affidavit of the Respondent No. 2 dated 27.05.2024</p> <p>Page 901-905, of the Affidavit of the Appellant dated 09.01.2023 and Page 1201-1204 of the Affidavit of the Appellants dated 29.05.2024</p> <p>Colour copies at page 901-905,1201-1204 and the List of Documents of the Appellants</p>
07.09.2022	The CZMP maps prepared for Goa came into effect, showing major portions of the project site to remain as sand dunes. The portion of the project area that is not shown as CRZ -I sand dunes (demarcated in green) constitutes CRZ -III land (200m to 500m) from the HTL	Page 901-905 of Affidavit in Rejoinder of Appellants dated 9th January 2023
22.08.2024	The Hon'ble NGT directed a joint Committee the Respondent No. 1 GCZMA and Respondent No. 4 MoEFCC, NCSM, Collector South Goa to conduct a fresh site inspection and submit its findings about the construction of the road by the Respondent No. 2, whether it falls within 500 mtrs of the HTL, whether it forms part of the hotel project of the Respondent No. 2 and whether	

	the Respondent No. 2 is responsible for the destruction of sand dunes for the same	
03.10.2024	In its site inspection report, the Respondent No. 1 has confirmed, once again that the Respondent No.2 is responsible for the destruction of 1100m ² of sand dunes	Page 1289,Page 1306,1310-1313 of the Additional Affidavit of the Respondent No. 1

Summary of Arguments

Sr No	Particulars	Page No
1	The present project is prima facie entirely illegal in light of the fact that it is an admitted position of the Respondent No. 4 MoEFCC that as per Regulation 8 (i) III. CRZ-III, - B(I), CRZ Notification, 2011 read with the Guideline No.I, of the Guidelines at Annexure III of the CRZ Notification, 2011,the MoEFCC is the authority that could have issued a CRZ Clearance, if any, to the project, but it had not received any application for a CRZ clearance.	Para 8,9, 10 and 11 page 993 to 994 of the Affidavit of the Respondent No. 4
2	The CRZ clearance for the project has been wrongfully issued by the Respondent GCZMA, that too while citing Regulation 8 and Annexure III of the CRZ Notification of 2011. Neither the Respondent GCZMA nor the Respondent MoEFCC have responded directly to this averment raised by the Respondent No. 4 MoEFCC and the Appellants beyond stating that the Appellants had not raised this averment in its original pleadings.	Page 1192-1193, Second Additional Affidavit in Rejoinder of the Appellant
3	The EC granted to the project in the year 2000 has also long since expired and is not valid till date. The Respondent has not produced any extension of the EC in its pleadings.	Page 932-934 of the Affidavit of the Respondent No. 1 dated 12.01.2023
4	Additional grounds and averments, that the Appellants may not have raised in its Appeal, but have been learnt by the Appellants through the course of the hearing of the Appeal due to documents	Para 8,9, 10 and 11 page 993 to 994 of the Affidavit of the

	<p>produced by the Respondents on affidavit can, and must, be considered by this Hon'ble Tribunal. This Hon'ble Tribunal is vested with the power to prescribe its own procedure under Section 19 of the NGT Act, 2010 and also has the power to pass orders or give such directions as maybe necessary or expedient to give effect to its orders or prevent abuse of its process <i>or secure the ends of justice</i> as per rule 24 of the NGT Practice and Procedure Rules, 2011. It is settled law that the Hon'ble NGT is a sui generis body with and that the jurisdiction and mandate of the NGT is conceived to be of the widest amplitude [<i>Municipal corporation of Greater Mumbai v. Ankita Sinha and Ors. Civil Appeal No. 86/2019</i>]</p>	<p>Respondent No. 4</p> <p>Page 1192-1193, Second Additional Affidavit in Rejoinder of the Appellant</p>
5	<p>It is not possible for the present project to be constructed without destroying sand dunes as is evident from the record, and further the destruction of the sand dunes at the hands of the Respondent No. 2 has been confirmed by the Respondent No. 1 on two separate occasions after conducting site visits in November 2021 and October 2024.</p>	
6	<p>In November 2021, when construction of the project had just about started as per the admitted position of both the Appellants and Respondent No.2 as recorded in the impugned order dated 03.03.2022, the Respondent No. 2 had evidently destroyed and cut 1100m² of sand dunes as per the admitted position of the Respondent No. 1 GCZMA - for the widening of the 5m road on the property and to enable public access to the beach. It is submitted that without prejudice to the contention of the Appellants that the 5m road was not previously in existence, and that destruction of sand dunes exceeded 1100m², the overall construction of the hotel project which has continued since November 2021 has resulted in further destruction of the sand dunes on the project site.</p>	
7	<p>The destruction and cutting of sand dunes is not permissible under:</p> <p>1) the provisions of Clause 8(V)III(3)(vi) <i>Special provisions for Goa</i> and Clause 8(I)(i)</p>	

	<p>read with Clause 7(i)(A)(c) of the CRZ Notification, 2011</p> <p>2) The Conditions of the CRZ Clearance dated 22.10.2015 which was subsequently renewed</p> <p>3) Guideline No I(d) in the <i>Guidelines for development of Beach Resorts or hotels in the designated areas of CRZ-III and CRZ-II for occupation of tourists or visitors with prior of Approval of the Ministry of Environment and Forests</i> at Annexure III of the CRZ Notification of 2011 categorically prohibits flattening of sand dunes.</p>	
8	<p>There is no legal provision allowing for the destruction of sand dunes, even during a construction phase, and the law does not permit the compensation or transplanting of sand dunes to other sites, contrary to the discussions of the Respondent No. 1 in its 299th Meeting</p>	
9	<p>The Respondent No. 2 has wrongly asserted during the course of arguments that it can destroy sand dunes located beyond 500m of the HTL, which is not correct. The Specific Condition No. 12 of the CRZ Clearance dated 20.10.2015 has clearly stated that no sand dunes can be destroyed for the hotel project. Further, Clause 8(V)III(3)(vi) <i>Special provisions for Goa also note that no activity is to be permitted on sand dunes, beach stretches along the bays and creeks of Goa</i></p>	<p>Page 64 of the Appeal Paperbook</p>
10	<p>It is pertinent to note The Goa State Action Plan on Climate Change for the period between 2020-2030, which was commissioned by the Goa State Biodiversity Board recommends that projects reflected in the coastal development plan or zone for new construction based on the climate predictions on sea-level rise, flooding, and erosion be <i>reconsidered</i>. Therefore a project such as the present Hotel Project which is admittedly being constructed through the destruction of ecologically sensitive sand dunes, with an expired Environmental Clearance and a CRZ clearance issued by the wrong body, namely the Respondent No. 1 GCZMA instead of the Respondent</p>	<p>Page 262-425 of the Appeal Paperbook Relevant observation at item 12 on page 269 of the Appeal Paperbook</p>

	no. 4 MoEFCC should not be permitted at all by this Hon'ble Tribunal.	
11	<p>It is pertinent to note that none of the other clearances issued to the Respondent no. 2 permits, condones or allows the destruction of sand dunes.</p> <p>In fact the Technical Clearance order of the Senior Town Planner dated 27.02.2023 repeats at conditions 25 and 27 that sand dunes are not to be disturbed while carrying out construction activity [Page 1165 of the Affidavit of the Respondent No. 2 dated 27.05.2024]</p>	Page 1163-1172 of the of the Affidavit of the Respondent No. 2 dated 27.05.2024
12	<p>It is also pertinent to note that the impugned directions dated 03.03.2022 calls upon the Respondent No. 2 to restore the sands dunes destroyed by it. However, as confirmed in the inspection report of the Joint Committee dated 03.10.2024, no such restoration of sand dunes has been conducted,</p>	Page 57 of the Appeal Paper book
13	<p>The Appellants have produced scientific papers on the correct method to restore sand dunes in the present Appeal, and the restoration of the damaged sand dunes should be done in the methods recorded as per the said scientific papers</p>	Page 225- Relevant observations at page 233-237 of the Appeal Paper book
14	<p>The Appellants have produced on record the following judgments highlighting the importance of sand dunes:</p> <p><i>1.Alexio Periera v State of Goa (OA 03/2014) [Para 17(iii)]</i></p> <p><i>2.Eduardo Perieia v GCZMA and Anr (Appeal No. 53/2019) [Para 2 and 7]</i></p> <p><i>3.Rajakkamangalam Thurai Fishing Harbour Pvt., Ltd v Union of India, in Appeal No.77 of 2015 [Relevant para 13, 24-30, 61]</i></p> <p>The Appellants have also produced on record, the following judgments:</p>	<p>Page 187-213 of the Appeal Paper book</p> <p>Page 214-217 of the Appeal Paper book</p> <p>Page 426-503 of the Appeal Paper book</p>

	<p>1. <i>Ratheesh K.R v State of Kerala 2013 SccOnLine Ker 14359 [Completion of Construction of hotel project should not excuse violation of CRZ Notification - Para 107-108 Page 581]</i></p> <p>2. <i>A.P. Pollution Control Board v. Prof. M.V. Nayudu & Ors. (AIR 1999 SC 812) [Precautionary Principle - Para 33-34,58]</i></p> <p>3. <i>Lal Bahadur v. State of U.P., (2018) 15 SCC 407, [Public Trust Doctrine - Para 17-21-Pages 632-638]</i></p> <p>4. <i>Indian Council for Enviro-Legal Action v Union of India 1996 3 SCC 212. [Polluter Pays principle - Para 67]</i></p> <p>5. <i>M.C Mehta v Kamal Nath and Ors. (1997) 1 SCC 388, [Public Trust Doctrine - Para 23-25, 33,34 and 39]</i></p>	<p>Page 520-594 of the Appeal Paper book</p> <p>Page 595-619 of the Appeal Paper book</p> <p>Page 620-641 of the Appeal Paper book Page 642-683 of the Appeal Paper book Page 684-711 of the Appeal Paper book</p>
15	<p>It is pertinent to note that vide its Additional Affidavit dated 15.01.2025, the Respondent No. 2 has made a desperate attempt to assert that the CZMP maps of 2011 were wrongly prepared and require revision, however The CZMPs prepared under the CRZ Notification of 2011 have been finally notified and approved by the MoEFCC in September 2022, and stand as the valid, enforceable law of the land. The Respondent No. 2 itself has not challenged the CZMP maps. The RTI documents annexed to the said Additional Affidavit of the Respondent No. 2 reveals that the Government of Goa has specifically listed the alleged types of errors in the CZMP maps such as issues with demarcating khazans, mangrove buffer zones and HTL, but there is not a single reference to sand dunes. Hence, there is no controversy, as far as the records and the Government of Goa is concerned, regarding sand dunes. Hence the affidavit does not provide any relevant facts for the present case.</p> <p>The annexures of pages 1394-1407 of the affidavit lists the alleged specific errors by sheet number, and the entries for Cavelossim at page 1395-1396 of the</p>	<p>Page 1394-1407 of the Additional Affidavit of the Respondent No. 2 date 15.01.2025</p> <p>Page 1395-1396 of the Additional Affidavit of the Respondent No. 2 date 15.01.2025</p>

	Affidavit (which is where the present project is located) have no mention of errors in sand dune marking.	
16	For the aforementioned reasons, the prayer clauses “a” to “f” deserve to be granted and made absolute by this Hon’ble Tribunal. The Appellants further submit that the present Appeal is a fit case for this Hon’ble Tribunal to disallow the construction of the present Hotel Project in the absence of a fresh Environmental Clearance and CRZ Clearance.	

Submitted by



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Advocate for the Appellants