

/

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

APPEAL NO. 18 OF 2023 [WZ]

BETWEEN:

Peter Coutinho

....APPELLANT

AND

The Goa Coastal Management
Authority and Anr.

.....RESPONDENTS

**WRITTEN SUBMISSION DT 19.11.2024 OF
RESPONDENT No. 2**

1. The subject property, is a case decided under SMWP 02/2006, lies on the beach front within 50 metres from HTL in sy no 39/1 of NDZ of CRZ III in Colva village Salcete Taluka, Goa.
2. The subject structures are put up without approvals post 19.02.1991. All of the material and documents establish that the subject structures have been put up post 19.02.1991, and the structures are rightly ordered to be demolished. The R2 makes the following submissions to the effect that the order dt 14.02.2023 ought to be upheld and not be interfered with :

AA

- I. Subject structures are erected post 19.02.1991 without mandatory approvals
- II. The Appellants' arguments that the order dt 14.02.2023 is 'without jurisdiction'/'functus officio' is without any basis and incorrect.
- III. Scope of the Appeal limited to challenge to order dt. 14.02.2023

I. **Subject structures are erected post 19.02.1991 without mandatory approvals**

3. This answering Respondent submits that the documents on record conclusively establishes that the subject structures were not in existence prior to 19.02.1991, and have been constructed only after the said date without mandatory approvals. This is evident from the following facts/document:

a. The DSLR Plans of the subject plot A1 area of 517sqm and B1 area of 271sqm including the subject Sy. No. 39/1 of Colva village dt. 12.12.1996 and 22.08.1997 (*refer pages 206 & 207 of Appeal memo*) do not show any structures adjoining the beach front.

b. The DSLR mapping (*refer page 312, Exh A2*) dt 24.01.2022-18.02.2022. legend shows CRZ resurvey buildings 2006 in light green carried out under directions of Hon'ble High Court of Bombay at Goa in SMWP 02/2006 and further extension to the structures in orange constructed between 2006 and 2022

MA

3

encroaching between the LTL and HTL under directions in PIL 10/2020 before Hon'ble High Court of Bombay at Goa.

c. Photographs taken during the years 2019 -2021 (*refer pages 210-212*) are evidence that the Appellant has been reconstructing without approvals every year after the sea washes away the encroachment on the beach and they also corroborate that the Appellant has encroached within the HTL of Colva Beach, Salcete.

d. No permissions, construction plans, Technical clearance, Completion Certificates, Occupancy Certificates, Inspection Reports, et al. as required by the Goa Town and Country Planning Act 1974; the Goa Panchayat Raj Act 1994; and other laws has been produced from any Authorities by the Appellant to show authorization of structures.

e. No NOC from the Environment Development Council (EDC), the Goa State Committee for Coastal Environment (GSCCE), and/or the Goa Coastal Zone Management Authority (GCZMA) has been produced.

f. No NOC from the Technical officer under Goa Daman and Diu gazette Notification dt 20.07.1971 (*refer Section 3 page 307*), which was mandatory for all permissions which came up prior to 1994 i.e. the date of the enactment of the Goa Panchayat Act (*refer page 7 para 8*).

4

g. No Conversion Sanad was obtained as required under the Land Revenue Code 1968.

h. The Deeds of Sale dt 01.08.1996 does not mention the existence of any Bar and Restaurant or Gr+1 structure nor the area of the structures (*refer page 51 para 5 of order & pages 287-288, para 5 & 6 of reply of R2*).

i. The Electricity Bill in the name of the Appellant though there is no survey no. mentioned (*refer page 313*) shows **date of connection 22.07.1996**.

j. The Water Bill (*refer page 314*) **dt. of Installation is 26.06.2001**. This is evidence that the electricity and water connections came to be connected after Appellant purchased the property in 1996.

k. The Appellant has relied on certain documents in an attempt to prove that the subject structures were in existence prior to 1991. However, this Respondent submits that the below documents which the Appellant has produced in support of these claims cannot be relied upon for the following reasons :

i. The Appellant has not shown the connection to his structure of the documents dt 14.02.1966 (*refer page 177*) issued to obtain a loan for a structure named "casa de medance". None of the documents produced (*refer pages 177 - 187*) mention a survey number nor are documents annexed to prove authorization of the structures,

5

ii. The document dt 18.04.1988 (refer page 185) is a temporary licence for a temporary stall, no survey no. mentioned valid from 19.04.1988 to 31.05.1988 proves that there was no permanent structure as claimed by the Appellant.

iii. Journals etc of the year 1984 etc. (refer pages 200 - 202) cannot be relied on as there are no survey numbers to depict where the so called Sunset Bar and Restaurant is situated. The Appellant has not produced any permissions, licenses etc of 1984 to prove that such structures were operational, functional and authorised under various Statutory laws. In any event, assuming without admitting the pleas made by the Appellant, references in print media journals prove existence of a structure at best, and certainly do not prove the legality of the structure.

iv. The Appellant places reliance on the proceeding sheets at page 75 - B to submit that the mere recording of the submissions of the Appellant are to be accepted as evidence is false, I say that this cannot be relied upon as the sheet does not mention any approvals nor does it record any government document which show that the structures were authorised. Further the Sheet has no date mentioned on it.

v. The Appellant has placed reliance on the order dt 28.01.2009 (refer page 74) by which the Panchayat withdrew its SCN dt 10.04.2008 purportedly in an attempt to show the legality of the structures. In this regard, it is necessary to point out that **There were Two Show Cause Notices (SCN) issued by the Village Panchayat (this Respondent No 2 was not part of either of the proceedings)** pursuant to order dt 26.09.2007 of the Hon'ble High Court (refer page 44 para 1) based on the mapping by the DSLR in 2006.

JA

6

vi. The Panchayat issued SCN dt 10.04.2008 (refer page 69) and the Appellant filed his reply thereto (refer page 70-72) The Panchayat heard the Appellant and concluded that the reply did not produce any legal documents such as plans, licences/NOC hence termed the structure with an area of 353 sqm was illegal and issued Demolition order dt 19.01.2009 (refer page 73) despite such evidence the same Panchayat could not have rendered the demolition notice to have been issued mechanically by withdrawing the notice through a letter dt 28.01.2009 (refer page 74).

vii. **Second** SCN dt 01.09.2012 was issued (refer to Exh A5 page 315) directing the Appellant to produce Construction license issued before 1991 and after 1991, approval from the Town and Country Planning Department and any other documents showing legality of the structures existing prior to 1991. To the best of the Answering Respondents knowledge, these proceedings are still pending.

viii. The Appellants statement that "minor repairs were carried out to the structure in 1987" is a vague statement, and no document has been produced along with plan with the area of the structure and Technical Clearance from the relevant authorities.

ix. The Appellant has not produced any legal document of 1996 to prove that the commercial establishment was legally transferred from Sunset Bar to Boomerang Bar and Restaurant (page 51 para 5).

II. The Appellants arguments that the order dt 14.02.2023 is 'without jurisdiction' 'functus officio' is without any basis and incorrect.

7

4. The Appellant argues that in terms of the order dt 30.05.2019 the decision taken in the 211th meeting dt 24.08.2019 to allow the Review Application (RA) dt 09.07.2019 read with the order on maintainability communicated on dt 24.03.2022 the R1 Authority could not have decided to dismiss the Review Application through the impugned order dt 14.02.2023 as it was already functus officio (*refer page 32 ground 'h' and 'i'*) and the R1 Authority has thus exceeded its powers of jurisdiction.

5. This answering Respondent states that this ground is without merits, is incorrect and based on incorrect reading of the R1 Authority's orders.

a. I say that the decision dt 24.08.2019 of the R1 did not culminate into a formal order and therefore was not a final decision (*Refer to Hon'ble High Court of Bombay at Goa in WP 406/2021 Order 02.03.2022 annexed & relevant pages*)

b. I say that several hearings later in the 293rd meeting dt 24.02.2022 (*refer to para 1 page 62*) it was brought to the notice of the R1 that no formal order was communicated hence without hearing the parties on merits of the three grounds referred to in the Review Application the R1 informed the parties it would communicate the order on maintainability and explicitly stated that the matter was posted for final arguments on merits on the next date. (*refer page 62 para 1*)

JA

-8

c. Both the parties were informed through order dt 24.03.2022 that the Review Application is maintainable and the same would be heard on merits.

d. I say that if the Appellant was of the opinion that his Review Application was allowed through the 24.03.2022 order as he is now contending in the present Appeal, the Appellant would have challenged the decision of the Authority to hear the Review Application on merits.

e. I say that if the order dt 24.03.2022 had finally decided the Review Application this order would have recalled the demolition order dt 30.05.2019 but on the contrary, the R1 Authority decided to hear the Application on merits.

f. Further I say that both the parties ie the Appellant and the R2 herein were well aware that the order dt 24.03.2022 was not an order on merits but only an order on maintainability and that is why both the parties participated in the 300th, 303rd, 310th and 317 hearings (*refer para 3 page 62 to para 5 page 64*) and presented evidences, documents and made their submissions based on merits of the Review Application knowing fully well that the 24.03.2022 order was only on maintainability. The Appellant who joined the hearings, after communication of Order on Maintainability dt 22.03.2022, during the 300th, 303rd, 310th and 317th meetings (*refer last para page 62 to para 1 page 65*) never once objected to the hearings. but instead kept on producing additional documents [*which did not prove authorisation of structures*].

6. Therefore, I say that when the impugned order dt 14.02.2023 was issued by the R1 Authority it considered and gave its opinion on each of the three grounds raised in the Review Application by the Appellant. finding that whilst the original decision may or may not on merits have been correct there is no case made out for a procedural review which is a limited power of the GCZMA (*Refer pages 65 para 2 to page 66 para 5*)

7. I say that there is no question of the R1 Authority being "functus officio" as the order 24.03.2022 is on maintainability and the order dt 14.02.2023 is on merits of the Review Application and hence on two separate footings.

III. SCOPE OF THIS APPEAL

8. This Hon'ble Tribunal as an Appellate Court has wide powers to consider any and every aspect of the merits of the order dt 14.02.2023 challenged before it.

9. On 30.05.2019 when the demolition order was passed the Appellant preferred an Appeal 46/2019 on 05.07.2019, and chose to withdraw it on 07.08.2020. " Thereafter the Appellant filed a Review Application on 09.07.2019", " and with what has come to be impugned before this Hon'ble Tribunal is the order dt 14.02.2023 passed by the R1 Authority on the Review Application filed by the Appellant.

10. The present Appeal is not against the original order for demolition dt 30.05.2019 (refer page 66 para 2 line 3) ".....In

JA

10

light of the rival contentions, the issue that crystallizes for determination is whether the grounds canvassed by the review applicant /original respondent are adequate and sufficient to convince the Authority to come to a finding different from the impugned decision taken at the 198th meeting the Authority found the issue in the negative.”

11. The limited scope for this Hon’ble Tribunal is only to decide whether the R1 Authority has rightly or wrongly dismissed the Review Application . Now that the R1 has dismissed the RA it is bound to implement its original order dt 30.05.2019.

12. The Appellant has with a hidden motive attempted to mislead this Hon’ble Tribunal by claiming that the Demolition order directed the Appellant to restore the user of the existing structure to ‘Residential’ (refer para 15 page 10) Such a statement is not found in any of the orders dt 05.12.2018, 30.05.2019 and 14.02.2023 issued by the R1 Authority.

13. I submit herein that the Appellant is a highly influential person as can be seen from the table at para 27 pages 293 - 295. It can be seen that the R1 Authority has heard the matter on several occasions and kept for orders, the orders were delayed and reminders had to be sent to the Authorities repeatedly to pass orders.

14. The Appellant has used all methods possible to abuse the process of law including forum hunting by approaching the Hon’ble High Court of Bombay at Goa after each demolition order



//
was passed in an attempt to delay the demolition. Such attempts provide ample time to continue with Commercial activities causing destruction of the Environment despite the Appellant not providing a single document to show the authorization of the structures that have encroached within the High Tide line .(refer to photographs at pages 210 - 212)

15. This Appellant prays that this Hon'ble Tribunal uphold the impugned order dt 14.02.2023 and direct the immediate stoppage of commercial activities and the premises to be sealed till the structures of Boomerang Bar and Restaurant and Gr + 1 structure are demolished, and the land restored to its original condition. Further, Environment Compensation ought to be imposed on the Appellant in line with the scientific formula framed as per the directions of this Hon'ble Tribunal in order dt 02.11.2017 in O.A. 23 /2014 in the matter of Goa Paryavaran Savrakshan Sangharsh Samittee for severe damage to the Environment **for more than 28 years of its illegal existence.**

Margao - Goa
19.11.2024


DEPONENT



Eshu

12

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 406 OF 2021

HOTEL SILVER SANDS, REP. BY ITS
AUT. DIRECTOR, DIGVIJAY GUJRAL ...PETITIONER

Versus

STATE OF GOA, THR. ITS CHIEF
SECRETARY AND 2 OTHERS ...RESPONDENTS

Mr. Nitin N. Sardessai, Senior Advocate with Mr. Abhay Nachinolkar, Mr. Shivam Fadte, Mr. Kabir Sabnis and Mr. H. Vaze, Advocates *for the Petitioner.*

Mr. Prashil Arolkar, Additional Government Advocate *for Respondent Nos. 1 and 2.*

Mr. Nigel Da Costa Frias with Mr. Vishal Sawant, Advocates *for Respondent No. 3.*

CORAM: MANISH PITALE, J.

RESERVED ON: 22nd February 2022.

PRONOUNCED ON: 2nd March 2022.

ORDER:

1. The petitioner has approached this Court challenging an order dated 25.10.2021, passed by the respondent no. 2-Goa Coastal Zone Management Authority (GCZMA), whereby the GCZMA has reiterated its earlier directions to the petitioner to demolish all the structures in the property located in Colva village

12

of the Environmental (Protection) Act was necessarily impacted in the course of the process of review initiated by the petitioner in view of its continuation. Adversely, no such direction/order was issued. It is noted that in this regard, in the 256th meeting itself, it was recorded that the question whether GCZMA had power to review, was itself open in the backdrop of the fact that the issue had attained finality by dismissal of the Appeal by the Supreme Court. It was also recorded that when the aspect of procedural review was pressed into service on behalf of the petitioner, the matter having already attained finality, required detailed consideration. On this basis, notices were issued to the parties on hearing regarding the maintainability of the Review Application.

29. Pursuant thereto, the parties were heard on various dates and minutes of such meetings were recorded and also uploaded on the website of the GCZMA and ultimately, three specific issues were framed, which read as follows:

- (1) *Whether the Authority became functus officio after the decision recorded in the minutes of 253rd meeting?*
- (2) *Whether the Authority has jurisdiction to review its decision taken at the 18th meeting held on 30/10/2018?*
- (3) *Whether the applicant/original respondent suppressed a material fact from this Authority regarding the filing and*

14
*subsequent dismissal of its review petition
by Hon'ble National Green Tribunal in its
order dated 01.05.2019 in Review
Application no. 1/2019 (WZ) ?*

30. While rendering findings on the aforesaid three issues in the 276th meeting of the GCZMA, it was found that the petitioner had not approached the GCZMA with clean hands. The petitioner having filed Review Application before the NGT, was concealed from the GCZMA and that it was a clear case of forum hunting on the part of the petitioner. The GCZMA also found that the doctrine of merger clearly applied because the petitioner had challenged the decision dated 05.12.2018, pertaining to demolition of the entire structures before the NGT in Appeal and thereafter, upon dismissal of appeal by the NGT, before the Supreme Court, where the Appeal was also dismissed. The dismissal of the Appeal by the Supreme Court led to merger of findings and directions issued by the GCZMA on 05.12.2018. It is after the 276th meeting of the GCZMA leading to the impugned order dated 25.12.2021, issued for specific directions under Section 5 of the Environment (Protection) Act and Rule 4 of the Rules, that the Review Application stood dismissed and that the petitioner was directed to demolish all the structures on the property.

15

31. It is after passing of the impugned order/direction dated 25.10.2021, that it can be said that the Review Application stood disposed of and the matter pertaining to Review Application reached its culmination. The petitioner is not justified in contending that the uploading of the minutes of the 253rd meeting on the website of the GCZMA was enough to show that the GCZMA had become *functus officio*. Once this conclusion is reached, the principal contention raised on behalf of the petitioner that the impugned order dated 25.10.2021 amounts to a review of an order passed on a Review Application, is wholly unsustainable. The impugned order dated 25.10.2021, therefore, cannot be said to be an order without jurisdiction.

32. It also becomes clear that the reliance placed on behalf of the petitioner on judgement of the Supreme Court in the case of **State Bank of India & Others Vs. S.N. Goyal** (supra) is misplaced. In the said judgment also, in the context of quasi-judicial authorities, it is laid down that when "an order" of such an Authority is pronounced, published, notified or communicated, then such an Authority becomes *functus officio*. This Court finds that the minutes of the 253rd meeting of the GCZMA, although uploaded on the website may amount to notification, publication or communication thereof, but since the minutes of the meeting do not have the status of an

16

order/direction of the GCZMA as a quasi-judicial Authority, the ratio of the said judgment is inapplicable.

33. There is another important aspect of the present matter, which concerns finality of orders in the backdrop of the doctrine of merger. In the present case, it is an admitted position that the direction/order dated 05.12.2018, issued by the GCZMA attained finality by dismissal of Appeal by the Supreme Court and its merger into the order of the Supreme Court. The petitioner exhausted the statutory remedies of Appeal before the NGT and the Supreme Court and met with failure. It is also an admitted position that the petitioner filed a Review Application before the NGT, which was also dismissed.

34. Yet, the petitioner filed the aforesaid Review Application before the original Authority i.e. GCZMA itself, claiming that it was a procedural review and not a review on merits. Therefore, this Court examined the grounds raised on behalf of the petitioner in the Appeal filed before the NGT and the Supreme Court, as also the grounds raised before the NGT in review and thereafter the Review Application filed before the GCZMA. A perusal of the Appeal Memo filed before the NGT shows that emphasis of the petitioner was on the aspect that findings recorded in the survey plan were not justified and that principles

17

all material issues were ventilated and the documents produced by the petitioner were not considered. In the Appeal filed before the Supreme Court also, similar grounds of challenge were raised and specific grounds of challenge were raised pertaining to alleged violation of principles of natural justice, illegal and defective constitution of the GCZMA, illegal delegation of powers to the GCZMA, the said Authority acting in excess of jurisdiction, non-consideration of the material produced by the petitioner and that the fundamental rights of the petitioner were violated. As noticed above, the Supreme Court dismissed the Appeal after considering such grounds of Appeal.

35. The grounds on which the petitioner sought review before the NGT also show that the very same grounds pertaining to violation of principles of natural justice, illegal and defective constitution of the GCZMA and non-consideration of material were raised on behalf of the petitioner. Even in the Review Application filed before the GCZMA, in which the petitioner claimed that a review was not sought on merits, but only on procedural flaws shows that, again the very same grounds were raised on behalf of the petitioner. This Court has perused the Review Application filed by the petitioner allegedly on procedural flaws and it is found that the grounds therein are nothing but repetition of the grounds raised before the NGT as well as the

18

Supreme Court in Appeal as also the grounds raised in the Review Application before the GCZMA. Thus, it becomes clear that the petitioner was merely repeating the grounds of challenge and there was not an iota of procedural defect demonstrated on behalf of the petitioner. Hence, reliance placed on the judgment of **Kapra Mazdoor Ekta Union Vs. Birla Cotton Spinning and Weaving Mills Ltd. & Another** (supra), particularly paragraph 19 thereof, can be of no avail to the petitioner. It is found that the petitioner was only making desperate attempts to avoid the directions issued by the GCZMA in the order dated 05.12.2018. In this connection, it becomes clear that the petitioner is not justified in contending that this Court ought to look at the material that came on record during the process of the Review Application being considered by the GCZMA, to hold in favour of the petitioner. This Court is convinced that the findings rendered by the GCZMA on all the three issues in its 276th meeting, which culminated into the impugned order dated 25.10.2021, are correct and in consonance with the position of law. Once the direction dated 05.12.2018 attained finality, by dismissal of the Appeal by the Supreme Court and the doctrine of merger operated against the petitioner, there was no question of the GCZMA entertaining the Review Application. Merely because some observations were made in the 253rd meeting of the GCZMA, which in fact did not culminate into any order or

direction, it cannot be said that the same would accrue to the benefit of the petitioner by the very fact of the findings recorded in the order/direction dated 05.12.2018 issued by the G.C.Z.N.C., which had assumed finality.

36. After the hearing was over, the learned Senior Counsel for the petitioner handed over judgment of the Supreme Court in the case of **L. Chandra Kumar Vs. Union of India & Others**, (1997) 3 SCC 261, to contend that judicial review being a part of the basic structure of the Constitution, jurisdiction of this Court under Articles 226 and 227 of the Constitution of India cannot be hampered in any manner. As against this, the learned Counsel appearing for the respondent no. 3 placed reliance on **Natural Resources Allocation, In Re, Special Reference No. 1 of 2012** reported in (2012) 10 SCC 1, to emphasize on finality of orders.

37. There can be no doubt about the fact that the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India is a special jurisdiction and discretion can be exercised in special cases in the interest of justice, but, the same would not stretch to the extent that reliefs can be granted to the petitioner herein. This Court has already disagreed with the principal ground of challenge in the present Writ Petition that the

20 19

impugned order dated 25.10.2021 amounts to a review of a review. It is also found that the direction dated 05.12.2018, issued against the petitioner for demolition of the entire structures in property attained finality by dismissal of the petitioner's Appeal by the Supreme Court. The inevitable fallout of the finality of the directions cannot be avoided by the procedure sought to be adopted by the petitioner.

38. As noted above, the grounds stated in the Review Application before the GCZMA, claiming it to be a procedural review, were identical to the grounds raised by the petitioner on merits against the order/direction dated 05.12.2018, issued by the GCZMA, while filing Appeal before the NGT as well as the Supreme Court. The challenge raised on the very same grounds stood rejected finally by the Supreme Court. Therefore, there is no question of miscarriage of justice or any situation warranting exercise of discretion in favour of the petitioner in the context of the impugned order dated 25.10.2021.

39. It is brought to the notice of this Court that a party claiming to be the original owner of the property, also filed a Writ Petition before this Court raising similar grounds against the directions of the GCZMA. Admittedly, the Petition stood dismissed and the same also attained finality. This gives an

21

impression that the petitioner has undertaken all kinds of steps to somehow avoid the inevitable fallout of the findings of the GCZMA issued in the order/direction under Section 5 of the Environment (Protection) Act. The attempt on the part of the petitioner to claim procedural review before the GCZMA met its logical end in the impugned order/direction dated 25.10.2021, wherein the Review Application was found to be not maintainable, thereby leading to directions to the petitioner to demolish the entire structures in the property in question.

40. The petitioner has failed to make out any case for interference with the impugned order, passed by the GCZMA, under writ jurisdiction sought to be invoked in the present Petition. Hence, the Petition is found to be without any merit and accordingly, it is dismissed.

MANISH PITALE, J.

22

ORDER CONTINUED:

41. Upon pronouncement of the Order, the learned Counsel appearing for the petitioner submitted that the interim Order granted by this Court may be continued for eight weeks.

42. The said request is opposed by the learned Counsel appearing for the respondents.

43. This Court has given detailed reasons in the Order as to why it is found that the Petition is without any merit and does not deserve consideration. Hence, the prayer for continuation of interim relief is rejected.

MANISH PITALE, J.

[True copy JAF]