

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

APPLICATION NO. 4 OF 2020 (WZ)

IN THE MATTER OF:

CANSAULIM-AROSSIM-CUELIM CIVIC

AND CONSUMER FORUM AND ANOTHER... ... APPLICANTS

VERSUS

UNION OF INDIA & OTHERS... ... RESPONDENTS

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WRITTEN SUBMISSIONS ON BEHALF OF THE APPLICANTS

1. On the last date of hearing in the present matter (16.09.2020), the Hon'ble Tribunal was pleased to allow the Advocate for the Applicants to place her brief submissions orally before adjourning the matter to 24.09.2020 due to the unavailability of the Senior Advocate representing Respondent No. 4. The Hon'ble Tribunal in its order dated 16.09.2020 has given leave to parties to file Written Submissions before the next date of hearing.
2. The following Written Submissions may be read along with all the averments and submissions made in the Original Application [page 1 to 92], Reply to the Inspection Report [page 93 to 127], Rejoinder to Counter Affidavit filed by Respondent No. 4 [page 200 to 227], as well as oral arguments made before the Hon'ble Tribunal on behalf of the Applicants.

Applicants are praying for protection and restoration of water bodies and low-lying basins in hotel property and their demarcation on Survey Plans

3. The present matter relates to the protection of water bodies, low lying basins and storm water channels (*handis*) which are situated in the hotel property of Respondent No. 4, and restoration of the damaged water bodies and low-lying basins to their original state. The water bodies, low-lying basins and storm water channels form part of the natural water drainage network in the area, but have not been demarcated in the Survey Plan as yet.
4. This has been noted by the Water Resources Department, Respondent No. 8 herein, in its report dated 13.04.2015 (*Annexure A3, page 53 of the OA*). The report records:

“These storm, water channels and ponds are not shown on original survey plan of the Land Survey Department but are actually existing on site as seen during the inspection.”

The report also made the following observations:

“During this inspection the alignment of the Nallahs leading to the project site and the topography was also studied and the following are our observations:-

The presence of two handis of drain storm water channels and 6 ponds in the Sy. Nos. mentioned above was confirmed.

In case construction activity is permitted in the said plot the ponds will be destroyed due to filling up of the low lying area and there will be no basin left to permit monsoon water to accumulate....”

5. If these water bodies and low-lying basins are filled in or encroached upon, areas surrounding the hotel property and in close proximity to it will be flooded during the monsoons as the excess water will not be able to drain into the Arabian Sea. Members of the Applicants herein will be directly affected as waters will flood their villages, residential houses and agricultural fields.
6. The environment clearance dated 28.07.2017 granted to the hotel project was challenged by the Applicants in Appeal No. 84 of 2017 before this Hon'ble Tribunal. The same was dismissed vide judgment dated 15.04.2019 [*Annexure A1, page 37 of the OA*]. However, ***the Hon'ble Tribunal in its judgment directed the Respondent to abide by its undertaking with regard to the water bodies*** [*page 52 of the OA*].
7. To ensure compliance with the aforementioned direction of the Hon'ble Tribunal, the water bodies have to be necessarily demarcated in government records, otherwise neither verification nor action can be initiated for non-compliance of the Hon'ble Tribunal's direction as well as of the conditions of the No Objection Certificate (NOC) dated 05.09.2014 issued by the Water Resources Department to the project [*Annexure A2, page 53 of the OA*]. The conditions in the NOC include:
 - "1. The nallahs and the water bodies in the said property should not be altered or altered as presently existing on site.
 2. The low lying fields which act as detention basins should be maintained.

3. Construction should not obstruct the discharges in the nallah and connectivity to flows should be maintained.

...”

8. The Water Resources Department has also acknowledged the need for demarcation of the water bodies in its letter dated 04.07.2019 [*Annexure A10, page 72 of the OA*]. The letter states that the demarcation was required '*in order to enable this office to ensure that the storm water channels, water bodies and detention basins are not disturbed during any construction activities*'.

Respondent No. 4 cannot deny the existence of these water bodies

9. The NOC issued by the Water Resources Department [*Annexure A2*] and its Report [*Annexure A3*] referred to above unambiguously evidence the presence of these water bodies, *nallahs* and low-lying basins in the property. The same have not been challenged by the Respondent at any stage. Furthermore, the Respondent has admitted to their presence on its property during the proceedings of Appeal No. 84 of 2017 as has been recorded by this Hon'ble Tribunal in its order [*page 49 of the OA*]:

“16. Project Proponent has submitted that as far as water bodies and storm water drains are concerned, their existence at the site was confirmed and Water Resources Department of Govt. had already given NOC with a condition that Project Proponent would not alter the storm water drains and water bodies.”

Respondent No. 4 is now estopped from stating that there are no such water bodies or storm water drains at the project site.

Applicants are not challenging the grant of environment clearance and CRZ clearance to the hotel project

10. The grant of environmental clearance and CRZ clearance to the Respondent has not been challenged in this present Application in any manner or form. Applicants are well aware of the final decision of the Hon'ble Supreme Court in Civil Appeal No. 4664 of 2019 and the same has been duly disclosed in Para 36 of the Original Application. Allegations made by Respondent No. 4 in its Counter Affidavit in this regard and claims relating to the application of the principle of *res judicata* are merely to distract from the crucial issues of protection and demarcation of water bodies in the hotel property.
11. It is pertinent to note however that the Hon'ble Supreme Court's order dated 01.07.2019 dismissing the civil appeal did not in any way modify or affect the Hon'ble Tribunal's direction to the Respondent to abide by its undertaking with regard to the water bodies, which direction has therefore now attained finality.

Hon'ble Tribunal has jurisdiction under Sections 14 and 15 of the National Green Tribunal Act 2010

12. The water bodies, low lying detention basins and the storm water channels in the hotel property are an essential part of the natural water drainage network in the area in question. The protection of these natural entities from encroachment is a substantial question relating to the environment. There will be severe environmental consequences on the areas surrounding the hotel property if these entities are filled in or encroached upon. If the storm water channels

(handis) are not preserved in their original state, the salt water from the Arabian Sea is likely to enter into the channels. Therefore, the Hon'ble Tribunal's power under Section 14 of the NGT Act have been appropriately invoked by the Applicants. It is humbly submitted that this Hon'ble Tribunal is well within its jurisdiction to direct the appropriate agencies to undertake the task of demarcation of water bodies and low-lying areas on the property.

13. Under Section 15(1)(c) of the NGT Act, this Hon'ble Tribunal has the power to order for restitution of the environment in the present case. The Hon'ble Supreme Court of India in *Mantri Techzone Pvt. Ltd. v Forward Foundation* (2019) SCC OnLine SC 322 has held that the powers under Section 15(1)(b) and (c) of the NGT Act are wide in nature and not limited to Schedule I enactments:

"42. The Tribunal has also jurisdiction under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Section 15(1)(b) and 15(1)(c) the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment.

43. Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence

under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.

44. The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See *Kishore Lal v. Chairman, Employees' State Insurance Corpn.* (2007) 4 SCC 579, para 17). The existence of the Tribunal without its broad restorative powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment." (emphasis added)

Respondent No. 4 has not permitted inspection and survey of its property by government officials.

14. The Applicants herein have sent several representations to various local authorities including the Collector and the Water Resources Department to undertake an inspection of the property and to demarcate the water bodies on the Survey Plans. However, the same has not been done till date.
15. Officials from the Water Resources Department and a surveyor deputed by the Inspector of Survey & Land Records, Vasco visited the hotel property for inspection on 29.08.2019. However, despite giving prior intimation to the hotel owner about the inspection along

with clear reasons for the inspection, the officials were not permitted inside. The same was recorded in a report dated 09.09.2019 [Annexure A13, page 75 of the OA].

16. An official of the Water Resources Department along with a Surveyor visited the hotel property for an inspection on 06.12.2019. They were yet again denied entry by the security at the entrance. The officials were permitted inside only when the Deputy Collector was called and other officials arrived at the site, and it was late afternoon by then. However, no inspection could be carried out as the officials had not brought any machinery/ equipment to undertake the demarcation exercise.

Inspection carried out on 26.02.2020 was not in consonance with the direction issued by the Hon'ble Tribunal

17. The Hon'ble Tribunal vide its order dated 12.02.2020 had directed that a joint inspection be carried out of the hotel property in question by a committee composed of i) the Collector, South Goa District; (ii) the Director, Directorate of Settlement & Land Records (DSLRL), Goa, or his representative and, (iii) the Goa State Pollution Control Board to verify on the factual aspects and submit a report. Applicants have presented detailed objections to the inspection report submitted to the Hon'ble Tribunal [*Reply to the Inspection Report: page 93 to 127*] and the main objections are summarized below:

- 17.1. The Hon'ble Tribunal's order dated 12.02.2020 categorically recorded that '*The Applicant shall be permitted to participate*

and be present during the inspection when undertaken by the Committee'. However, the Applicants were not given any prior notice of the inspection. They were informally informed by the Hon'ble MLA of Cortalim Constituency over the phone when the inspection was about to commence.

- 17.2. A few members of the Applicants reached the hotel property. They lodged their protests against the inspection verbally and in writing. However, their objections did not find any mention in the Inspection Report. They were not allowed to express their concerns or assist the inspection committee. The Inspection Report includes incorrect statements on claims made by 'Complainants' during the inspection, as in fact none of them were allowed to speak.
- 17.3. Although the Director, DSLR, Respondent No. 7 herein, or his representative was directed to be a member of the joint inspection team by the Hon'ble Tribunal, officials of the DSLR arrived only after the inspection was over and said that they received no prior official intimation about the inspection. The same has been recorded in a file noting dated 02.03.2020 which has been obtained under the Right to Information Act 2005 [*Annexure R1 (Colly)*, page 223 of *the Rejoinder*]. It is humbly submitted that this is in clear violation of the Hon'ble Tribunal's order which had deemed it necessary for the DSLR officials to be present during the inspection. It is further submitted that the crux of the present Application is the proper demarcation of storm water

channels, low-lying areas and water bodies in the hotel property. Therefore, it was absolutely imperative that an official of the DSLR be present at the site. The inspection report is entirely misleading when it states (at page 6) that there has been no demand for demarcation.

- 17.4. The inspection was carried out only in a part of the hotel property, instead of the entire area in question as directed by the Hon'ble Tribunal in its order dated 12.02.2020.
- 17.5. The Committee members took at face value statements made by Respondent No. 4. As was confirmed by the report dated 13.04.2015 filed by the Water Resources Department there are water bodies in the hotel property. None of these were pointed out or recorded by the Committee.

In light of the above deficiencies in the inspection and its report, the findings of the inspection committee that there is no water body ought to be disregarded entirely.

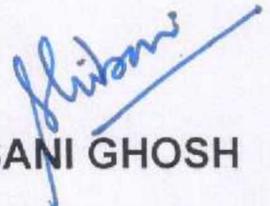
Applicants' *locus standi* is clearly established and there are no grounds to question their motives in approaching the Hon'ble Tribunal

18. While exercising their constitutional and statutory rights, the Applicants and other persons have approached various forums, including this Hon'ble Tribunal, for grievance redressal. Their determined attempts at challenging various aspects of the project

are solely motivated by their interest in protecting their lands, fields and the surrounding environment – and they have a right to do so.

19. The Applicants take strong exception to baseless allegations made by Respondent No. 4 in its Counter Affidavit with regard to their motives in bringing this matter to the notice of the Hon'ble Tribunal. Respondent No. 4 is under an obligation to protect the water bodies and low-lying basins in its property. It should have no quarrel with demarcation of the same. It is indeed regrettable, and contrary to law, that the Respondent No. 4 is objecting to a simple demarcation exercise. As is apparent, the Applicants are seeking no private rights on the water bodies.

In view of the aforementioned submissions, as well as averments made in written pleadings and oral arguments on behalf of the Applicants, it is humbly prayed that the present Application be allowed; that the water bodies, storm water channels and low-lying basins in the hotel property be properly inspected and demarcated on the Survey Plans in the presence of the Applicants, and these natural entities be restored to their original state.


SHIBANI GHOSH

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23.09.2020