

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONAL BENCH AT PUNE
ORIGINAL APPLICATION NO. 102 OF 2019 (WZ)**

IN THE MATTER OF:

THE COLVA CIVIC AND CONSUMER FORUM

...APPLICANT

VERSUS

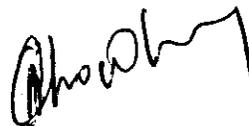
STATE GOVERNMENT OF GOA

...RESPONDENTS

INDEX

S.NO.	PARTICULARS	PAGE NO.
1.	Submissions to the compilation of documents submitted by Respondent No. 3	2-10
2.	<u>ANNEXURE A-1</u> copy of the Order dated 23/25.10.2021 by GCZMA	11-32

THROUGH



RITWICK DUTTA RAHUL CHOUDHARY

COUNSEL FOR THE APPLICANT

N-71, Lower Ground Floor, Greater Kailash-1

New Delhi- 110048

Mobile No. 9312407881

Dated:- 3.12.2021

GCZMA dated 04.03.2021 and certain judgments which have no relevance in the present matter.

3. That the following dates are relevant in the present case:

S.No.	Date	Event
1.	2006	<p>Mapping carried out by DSLR as has also been recorded in the minutes of the 187th meeting as follows:</p> <p><i>"As per the mapping carried out by the DSLR in 2006; new constructions have come up in the Survey Nos. 24/2, 24/3, 24/11 and 24/12 of Colva Village."</i></p> <p>(At Page 5 of the minutes)</p>
2.	30.10.2018	<p>The 187th meeting of GCZMA directed for demolition of all the structures existing in the aforesaid surveys by the following Order:</p> <p><i>"In view of the above observations, the Authority came to conclusion that the Respondent has undertaken large extensions without any valid permission in Survey Nos. 24/2, 24/3, 24/11 and 24/12. The old structures existing in Sy No. 24/3 and 24/12 as shown in the survey plan are no longer in its original condition. As per the mapping carried out by the DSLR in 2006; new constructions have come up in the Survey Nos. 24/2, 24/3, 24/11 and 24/12 of Colva Village. The Authority resolved that the Respondent has failed to establish/justify existence of</i></p>

4

		<p><i>the structures in Survey No. 24/2 and 24/11 of Colva Village and the existence of the renovated structures in Survey No. 24/3 and 24/12 of Colva Village, as prior to 1991 with the help of document/record.</i></p> <p><i>Hence the Authority resolved to pass demolition order against all the structures existing in Survey No. 24/2, 24/3, 24/11 and 24/12 of Colva Village, and direct HOTEL SILVER SANDS to stop all the commercial activity being carried out in Survey No. 24/2, 24/3, 24/11 and 24/12 of Colva Village with immediate effect".</i></p> <p style="text-align: right;">(Emphasis supplied)</p> <p>(At Page 5 of the minutes)</p>
3.	03.01.2019	National Green Tribunal dismissed the Appeal No. 79 of 2018 (WZ) filed by Respondent No. 3 wherein the National Green Tribunal upheld the order of GCZMA by giving a reasoned order.
4.	18.01.2019	Supreme Court dismissed the Civil Appeal No. 216 of 2019 filed by Respondent No. 3 against the order of National Green Tribunal in Appeal No. 79 of 2018 (WZ). The Supreme Court held that there was no need of interfering with the order of National Green Tribunal. It is submitted that the Supreme Court upheld the demolition order of GCZMA by dismissing the Civil Appeal filed by Respondent No. 3.

5.	01.05.2019	The National Green Tribunal dismissed the Review Application No. 01/ 2019 (WZ).
6.	04.03.2021	253 rd meeting of GCZMA was held in which GCZMA partly rescinded the decision taken by GCZMA in the 187 th meeting.
7.	23/25/10.2021	Order of GCZMA by which the Review Application filed by Respondent No. 3 was dismissed by the following order: <i>"In conclusion, and in light of the foregoing discussions, the Authority does not find any merit in the Review Application filed by the applicant/ original respondent, and the same stands dismissed. Proceedings closed."</i> (Emphasis supplied) (page 20 of the Minutes)

4. That Respondent No. 3 has relied on the minutes of the 253rd meeting of the Goa Coastal Zone Management Authority (hereinafter referred to as '**GCZMA**') dated 04.03.2021 wherein GCZMA has allowed the illegal constructions to continue by concluding that the said constructions are not in violation of the CRZ Notifications since they were in existence before 1991.

5. That after the 253rd meeting, the GCZMA issued a fresh notice of personal hearing to the parties. This has been recorded in the Order of GCZMA dated 23/25.10.2021 as following:

*"Prior to the communication of the said decision and its uploading on the Authority's website, this **Authority at its very next meeting i.e., the 254th meeting on 18.04.2021, decided to issue afresh***

*notice of personal hearing to the parties to hear them on the aspect of procedural review and as to how and in what manner the Review would lie or not before the Authority to **revisit its decision taken in the 187th Meeting held on 30/10/2018.***

(Emphasis supplied)

6. That reliance on the minutes of the 253rd meeting is faulty and misleading since GCZMA has conducted further meetings after the 253rd meeting, minutes of which clearly show that the decision made by GCZMA in the 253rd meeting has been modified.
7. That vide Order dated 23/25.10.2021, the GCZMA was pleased to dismiss the Review Application filed by Respondent No. 3.
A copy of the Order dated 23/25.10.2021 by GCZMA is annexed herewith as **ANNEXURE A-1.**
8. That, in light of such dismissal by GCZMA, the previous Order of the GCZMA made in the 187th meeting held on 30.10.2018 which directed demolition of illegal structures stands affirmed. In light of this, the Hon'ble Tribunal may also be pleased to direct demolition of all illegal structures existing in the No-Development Zone, as per the CRZ Notification.
9. That it is pertinent to mention that the National Green Tribunal has dismissed an earlier Appeal No. 79 of 2018 filed by the Respondent No. 3 on the grounds that, "*A bare perusal of the impugned order shows **that a large extension, without any valid permission, had been made in Survey No. 24/2, 24/3, 24/11 and 24/12. It is also revealed that the old structure existing in Survey No. 24/3 and 24/12 as shown in Survey plan was no longer in its original condition. As per the mapping carried out by DSLR in the year 2006, new construction had come up in Survey No. 24/2, 24/3,***

24/11 and 24/12. The authority below has arrived to a finding that the Respondent has failed to establish/justify existing of the structure in Survey 24/2 and 24/11 of Colva Village and the existence of the renovated structure in Survey No. 24/3 and 24/12 of Colva Village, as prior to 1991 with the help of any document/record.

...

*The Appellant has not placed any subsequent approvals, before the authority, with regard to extension/alternation of the structure as shown in DSLR Plan. So far as conversion of land is concerned, the Appellant had produced only in respect of one property bearing survey no. 24/3 (part) but had failed to produced conversion of 24/2, 24/11 and 24/12 of the Colva Village. So far as the sale deed executed in the year 1981, 1984 and 1985 are concerned, there was no plan attached to them. **The said sale deeds also do not specify the dimensions of house number 429 and plan of extension.** Needless to say, no document relating to title or otherwise in respect of immovable property is of any relevance without specifying the requisite details about the survey number on which it is situated, the details about the measurements and a clear plan attached with the registered sale deed."*

(Emphasis supplied)

10. That the Supreme Court also dismissed Civil Appeal No. 216 of 2019 filed by Respondent No. 3 by stating that, "*We are not inclined to interfere with the impugned order passed by the Tribunal. The appeal is, accordingly, dismissed.*"

11. That this has also been observed by GCZMA in its decision of dismissing the Review Application filed by Respondent No. 3 in the following manner:

*"In this factual background, it is clear that the **decision of this Authority at its 187th meeting merged with the order of Hon'ble National Green Tribunal dated 03.01.2019 in Appeal no. 79/2015 WZ**), which in turn merged with the order of Hon'ble Supreme Court dated 18.01.2019 in Civil Appeal no. 216/2019. In the Authority's opinion, the doctrine of merger clearly comes into play, and this Authority's decision taken at 187th meeting has merged with the Hon'ble Supreme Court's decision in Civil Appeal no. 216/ 2019.*

...

*Coming to the core issue, the question of whether a petition seeking review of a judgment against which the civil appeal has already been dismissed by Supreme Court is maintainable is no longer res integra. In a recent judgment dated 01.03.2019, a 3- judge bench of Hon'ble supreme court, in **Khoday Distilleries v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd (2019) 4 SCC 376**, while reaffirming its decision in *Kunhayammed and Others v. State of Kerala* ruled (at para 27 (b,) (vi) & (vii)) that: **"once leave to appeal has been granted and appellate jurisdiction of supreme court has been invoked, the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation. On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court, the jurisdiction of the High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 CPC."***

(Emphasis supplied)

12. That the case ***P. Singaravelan & ors v. District Collector, Tiruppur and DT and ors*** as referred to by Respondent no. 3 relies on another case titled ***Kunhayameed v. State of Kerala*** in para 6. The Supreme Court in this case observed the following:

"(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of the High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Order 47 Rule 1 CPC."

(Emphasis supplied)

13. That since an appeal was preferred to the Supreme Court in the present matter, the lower authorities lost their power to entertain a review petition in accordance with the decision of the Supreme Court in *Kunhayameed*.

14. That therefore GCZMA cannot give a decision that is against the decision of the National Green Tribunal in the same matter.

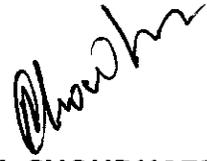
15. That it is submitted that GCZMA cannot review its own decision since there is no power of review granted under the CRZ Notification or Notifications under the Environment (Protection) Act, 1986. It is a well-settled principle that *"the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication"*.

16. That even if it submitted for the sake of argument that a review can be conducted by GCZMA, it should be noted that the Review Application was admitted and the GCZMA was pleased to dismiss it with a reasoned order on 23/25.10.2021.

17. That it is reiterated that the demolition order dated 05.12.2018 did not suffer from any procedural impropriety and was not merely based on the ground that the construction plan from 1980 is illegible, as has been claimed by Respondent No. 3 in their reply to the Original Application. The demolition order had relied on the mapping conducted by DSLR in 2006 on the express direction of the Hon'ble High Court of Bombay which clearly showed that the structures in question are new. Thus, exercising their discretionary power, the GCZMA did not direct ground truthing exercise all over again. Therefore, it is submitted that the contention that the absence or lack of ground truthing exercise is a procedural lapse on the part of GCZMA is untenable in law.

THROUGH

RITWICK DUTTA


RAHUL CHOUDHARY

COUNSEL FOR THE APPLICANT

Annexure A-1

GOA COASTAL ZONE MANAGEMENT AUTHORITY

C/o Department of Environment and Climate Change (Govt. of Goa)

4th Floor, Dempo Towers

Patto, Panaji Goa 403001

Email: goacoastal zone@gmail.com

Ref. No. GCZMA /SMWP/02/06/1145

Date: 23/10/2021

25

ORDER

- Ref: (1) Order dated 12/01/2015 in Suo Moto Writ petition no.02/2006.
 (2) Minutes of 115th GCZMA meeting held on 04/04/2015.
 (3) Minutes of 179th GCZMA meeting held on 19/07/2018.
 (4) Minutes of 180th GCZMA meeting held on 31/07/2018.
 (5) Minutes of 181st GCZMA meeting held on 14/08/2018.
 (6) Minutes of 186th GCZMA meeting held on 12/10/2018.
 (7) Minutes of 187th GCZMA meeting held on 30/10/2018.
 (8) Minutes of 197th GCZMA meeting held on 26/04/2019.
 (9) Minutes of 210th GCZMA meeting held on 07/08/2019.
 (10) Minutes of 211th GCZMA meeting held on 24/08/2019.
 (11) Minutes of 215th GCZMA meeting held on 22/10/2019.
 (12) Minutes of 225th GCZMA meeting held on 04/06/2020.
 (13) Minutes of 227th GCZMA meeting held on 17/09/2020.
 (14) Minutes of 238th GCZMA meeting held on 26/11/2020.
 (15) Minutes of 248th GCZMA meeting held on 11/02/2021.
 (16) Minutes of 253rd GCZMA meeting held on 04/03/2021.
 (17) Minutes of 254th GCZMA meeting held on 18/03/2021.
 (18) Minutes of 268th meeting held on 19/08/2021.
 (19) Minutes of 270th meeting held on 02/09/2021.
 (20) Minutes of 271st GCZMA meeting held on 21/09/2021.
 (21) Minutes of 276th GCZMA the GCZMA meeting held on 21/10/2021 and 23/10/2021.

WHEREAS, the present matter is interalia arising out of Suo Moto cognizance of Hon'ble High Court of Bombay at Goa, Panaji about the illegalities/constructions in CRZ area. The Hon'ble High Court of Bombay at Goa vide Order dated 26/09/2007 passed in the matter of Suo Moto Writ petition no.02/2006 had directed all Panchayats /Municipalities to submit action taken report with regard to constructions in NDZ/CRZ area as per terms mentioned therein along with an affidavit.

AND WHEREAS, the GCZMA has also filed necessary compliance reports from time to time in view of various orders passed by the Hon'ble High Court of Bombay at Goa in the matter. The above matter came up for hearing on 12/01/2015 before the Hon'ble High Court of Bombay at Goa and the Ms. N. Alvares, learned Amicus Curiae produced a list of pending structures which according to her no action has been taken. The structures are essentially concerning the respondent no.9 Anjuna Village Panchayat; the respondent no.10 Calangute Village Panchayat; the respondent no.17 Majorda Village Panchayat; and the respondent no.18 Betalbatim Village

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12

Panchayat. Further the respondent nos. 9, 10, 17 and 18 in the said matter were directed by the Hon'ble High Court of Bombay at Goa to file an additional affidavit disclosing the action taken in respect of such structures referred to in the said list which is marked 'X' for identification.

AND WHEREAS, with regard to the respondent no.19, Village Panchayat of Colva in the said petition, it was the contention of the learned Amicus Curiae that GCZMA has directed the local village panchayat to examine the legality of 19 structures which were referred to in the application for intervention filed by the intervenor. The learned counsel appearing for the local village panchayat has pointed out that there is material on record to suggest that the structures are not illegal.

AND WHEREAS, the Hon'ble High Court called upon the respondent no.19/village panchayat of Colva to furnish such material before the GCZMA and such Authorities/the respondent no.16 shall examine such material after hearing the parties in accordance with law. Mr. Manish Salkar, learned Government Advocate (Appearing on behalf of GCZMA) before the Hon'ble High Court of Bombay at Goa stated that such exercise shall be completed within six weeks from the receipt of such material from the respondent no.19 village panchayat Colva who shall produce the material within one week from today before the GCZMA. Accordingly the said village panchayat of Sernabatim, Vanelim, Colva & Gandaulim has produced its action taken report along with all the material record of relevant replies of the parties etc to the office of GCZMA vide letter dated 19/1/2015 bearing ref no.VP/SVCG/1928/14-15.

AND WHEREAS, the action taken report was filed by the Village Panchayat, Colva to the Hon'ble High Court of Bombay at Goa in the said matter with two Additional Affidavits dated 03/10/2012 and 23/06/2014 respectively annexing all the documents with regard to structures pointed by the interverner (Colva Civic & Consumer Forum) in its intervention application dated 13/07/2012 bearing MCA No.635/2012.

AND WHEREAS, the action taken report was filed by the Village Panchayat, Colva to the Hon'ble High Court of Bombay at Goa in the said matter with two Additional Affidavits dated 03/10/2012 and 23/06/2014 respectively annexing all the documents with regard to structures pointed by the interverner (Colva Civic & Consumer Forum) in its intervention application dated 13/07/2012 bearing MCA No.635/2012.

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AND WHEREAS, in the light of the above, the issue before the Authority was to examine the correctness of the action taken/order passed/Decision taken passed by the said Village Panchayat regarding withdrawal/revocation of Show Cause Notice and decision in the matter and file compliance report before the Hon'ble High Court of Bombay at Goa.

AND WHEREAS, the action taken report of the panchayat along with other relevant matter was placed in the 115th GCZMA meeting held on 04/05/2015 for discussion and deliberation. In the said meeting it was decided as follows: *"The Authority after detailed discussion and due deliberations, decided to refer the matter to the Inquiry Committee to examine all the documents on record and hear the parties if required and submit the detailed report to the GCZMA within 30 days. The Authority also decided to seek additional time of 3 months from the Hon'ble High Court of Bombay at Goa to place a detailed report of the GCZMA"*.

AND WHEREAS, in this regard the Inquiry Committee of GCZMA completed its inquiry and submitted its report dated 19/10/2015. The Inquiry Committee of GCZMA has interalia considered that the Town and country Planning Department had issued N.O.C dated 17/1/78; further construction licence of Village Panchayat was issued in the year 1978 and occupancy certificate was issued in the year 1981 to structure identified as "M" is DSLR plan the same is existing prior to Notification 19/2/1991 hence in accordance with law. The Inquiry committee GCZMA perused the survey plan submitted by the Panchayat and observed that there are new structures denoted "N", "O", "P" and "Q" existing within 200 mtrs of H.T.L and have no documents to indicate the same constructed with any permission or any licensing authority and hence further recommended removal of structures denoted "N", "O", "P" and "Q" in syno.23/12 Colva Village.

AND WHEREAS, the matter was placed for discussion in the 179th GCZMA meeting held on 19/07/2018. In the said meeting it was decided as follows: *"The Authority decided to issue personal hearing notices to all the parties including complainant to appear before it on 31/07/2018. The authority further noted that a lot of time has passed in the matter and it needs to be disposed expeditiously in accordance with law"*.

AND WHEREAS, the matter was placed for personal hearing in the 180th GCZMA meeting held on 31/07/2018. The proceedings held in the said meeting are

as follows: *"The complainant Mrs. Judith Almeida remained present in person and submitted that barring one structure all the construction is new. Village Panchayat had issued demolition orders. The said structure is G+1. Respondent remained present through his authorized representative and submitted that the structures are prior to 1991 and there is no new construction. The village Panchayat filed affidavit before Hon'ble high court stating they have dropped the proceedings against the respondent. Both the parties to file written submissions before the Authority."*

AND WHEREAS, in the 180th GCZMA meeting held on 31/07/2018 it was decided as follows: *"The Authority after hearing all the above parties, took on record submissions made by them. It directed all the parties to file written submissions before 14/8/18. The hearing on all the matters to continue in the next GCZMA meeting on 14/08/2018. Personal hearing notices were waived off."*

AND WHEREAS, the matter was placed for personal hearing in the 181st GCZMA meeting held on 14/08/2018. The proceedings and deliberations held in the said meeting are as follows: *"The complainant Mrs. Judith Almeida remained present in person and respondent remained present through his Advocate. Complainant produced additional documents on which she proposed to rely upon to the Authority and a copy to the respondent. Further the respondent sought time to file a reply by 28/09/2017. Accordingly Authority took a note of the written submission made by the complainant and directed respondent to file reply by 28/09/2018."*

AND WHEREAS, the matter was placed for personal hearing in the 186th GCZMA meeting held on 12/10/2018. The proceedings held in the said meeting are as follows: *"The complainant Mrs. Judith Almeida remained present in person and respondent remained present through his Advocate. The respondent sought additional time to file his reply."*

AND WHEREAS, in the 186th GCZMA meeting held on 12/10/2018 it was decided as follows: *"The authority decided to grant final opportunity for hearing and fixed the matter on 26/10/2018 on principles of natural justice."*

AND WHEREAS, the matter was placed for personal hearing in the 187th GCZMA meeting held on 30/10/2018. The proceedings held in the said meeting are as follows: *"The Complainant Mrs Judith Almeida remained present in person. The*

Respondent remained present along with his advocate. The complainant reiterates her stand in the complaint filed before the Hon'ble Court. The Complainant submitted that the structure in issue is Ground +2 with a mezzanine floor along with swimming pool which is claimed to be illegal. The Respondent submitted compilation of documents relied upon to support the case. The Respondent relied on the Inspection Report prepared by Engineer Mr Mahendra S. Kakule; Sale Deeds of 1984, 1985; Survey Plan of 24/2, 24/3, 24/11 and 24/12 of Colva Village, Conversion Sanad for Sy No. 24/3(part); Construction Licence of 1978; the structural plan obtained from the Town Planner, Town and Country Planning Department; Balance Sheet and P/L/Account of Bencomar Hotels of the year 1989-90; Notice for personal hearing dated 01/09/2016; Notice for personal hearing dated 5/10/2018; Letter from Village Panchayat of Sernabatim Colva. The Respondent further clarifies that Sy. No. 24/2, 24/3 24/11 and 12 belongs to Hotel Silver Sands and that the total area of the property is 4825 sq mts. The Inquiry Committee in its Report has erred to conclude demolition of the structures M, N, O, P, Q, in Sy No. 23/2 of Colva Village."

AND WHEREAS, in the 187th GCZMA meeting held on 30/10/2018 it was decided as follows: *The Authority differed from the findings of the Inquiry Committee on the grounds that the structures were wrongly identification. The Authority accepted the objection raised by the Respondent with regards to the wrong identification of the survey numbers. As such, the Authority amends the notice to the structures in Survey Nos. 24/2, 24/3, 24/11, 24/12 of Colva Village as mentioned by the Respondent. The Authority noted that there is a structure shown on the DSLR survey plan of the property bearing Survey Number 24/12, and 24/3 of Colva Village. The Authority noted that the Respondent has produced an illegible plan bearing No. DJ/1930/5406/80 dated 22/08/1980 issued by Town Planner, Town and Country Planning Department; however the plan does not mention any survey number, and does not show the swimming pool. The Respondent has failed to produce any subsequent approvals with regards to the extensions /alteration of the structures as shown in DSLR Plan. The Respondent has produced conversion Sanad of only one property bearing survey no.24/3(part) but has failed to produce Conversion Sanad of 24/2, 24/11, 24/12 of Colva Village. The Respondent has produced Sale Deed executed in the year 1981, 1984 and 1985. The Authority while considering the Sale Deed executed in the year 1981, noted that the Sale Deed mentions of House No 115 but the Respondent has failed to establish in which survey no this house is situated. Further, there was no plan attached to the Deed of Sale. With regards to the Sale Deed executed in the year 1984 and 1985, which pertains to survey no 24/12; has a*

residential house standing therein; but the Deed does not specify the area or dimensions of the House No. 429, and the plans for extensions if any (Before or after 1991)". In view of the above observations, the Authority came to conclusion that the Respondent has undertaken large extensions without any valid permission in Survey Nos. 24/2, 24/3, 24/11 and 24/12. The old structures existing in Sy No. 24/3 and 24/12 as shown in the survey plan are no longer in its original condition. As per the mapping carried out by the DSLR in 2006; new constructions have come up in the Survey Nos. 24/2, 24/3, 24/11 and 24/12 of Colva Village. The Authority resolved that the Respondent has failed to establish/justify existence of the structures in Survey No. 24/2 and 24/11 of Colva Village and the existence of the renovated structures in Survey No. 24/3 and 24/12 of Colva Village, as prior to 1991 with the help of document/record.

Hence the Authority resolved to pass demolition order against all the structures existing in Survey No. 24/2, 24/3, 24/11 and 24/12 of Colva Village, and direct HOTEL SILVER SANDS to stop all the commercial activity being carried out in Survey No. 24/2, 24/3, 24/11 and 24/12 of Colva Village with immediate effect".

AND WHEREAS, accordingly an Demolition order was passed on 05/12/2018 by GCZMA. The affected party approached Hon'ble High Court of Bombay at Goa to challenge the said demolition order bearing WP No. 171 of 2019. However, the Hon'ble High Court of Bombay passed order dated 05/04/2019 stating, "*Ad-interim relief, already operating to continue till the next date. However, it will be open to the GCZMA to take action for stoppage of commercial activities, if any, being conducted in the said premises*".

AND WHEREAS, the office of the GCZMA received an email dated 07-08/04/2019 from the Complainant interalia seeking for immediate implementation of the Hon'ble High Court order bearing WP No. 171 of 2019 dated 05/04/2019. The Office of the GCZMA issued directions to Hotel Silver Sands bearing letter no GCZMA/SMWP/02/06/39 dated 08/04/2019 directing them to stop all commercial activities and to comply with the High Court direction in Order dated 05/04/2019.

AND WHEREAS, an reply dated 11/04/2019 was filed to the directions dated 05/04/2019 issued by GCZMA. The affected party claims that, "*.....the commercial activity mentioned in the order of the Hon'ble High Court refers to the activity of lodging and boarding in the Hotel, presently there are 66 no of people residing, there are also booking done and payments advanced to the Hotel till 01st May 2019. Therefore if any running hotel has to be stopped the same has to be done in phased manner and can never be done with immediate effect.....*".

AND WHEREAS, Subsequently, the affected party filed another application dated 12/04/2019 giving their compliance and have further stated that, *"we have stopped commercial activities under protest until the W.P 171/2019 is decided by the Hon'ble "High Court of Bombay at Goa or our letter dated 11/04/2019 is considered".*

AND WHEREAS, the affected party on 16/04/2019 filed another application seeking relief by stating that, *".....they have already taken booking for a period till 31st June as check out date, that they have taken booking from various National and International Travel agents and charters."* The affected party further seeks time to stop commercial operations in a phase wise manner. On humanitarian grounds and no coercive action may be taken till 31st June. The affected party further submits that no fresh bookings will be accepted."

AND WHEREAS, the matter was discussed and deliberated in the 197th GCZMA meeting held on 26/04/2019. In the said meeting it was decided as follows: *"The Authority noted that it has already passed the demolition order in the present matter after detailed hearing. It has ordered immediate stoppage of commercial activities and thus the present application cannot be accepted. Further the applicant is directed abide by the orders of GCZMA immediately."*

AND WHEREAS, the matter was placed for personal hearing in the 210th GCZMA meeting held on 07/08/2019. The proceedings held in the said meeting are as follows: *"Complainant Mrs Judith Almeida was present for the hearing. Respondent was absent. The complainant stated that there is no reason to re hear the respondent as the Authority had already heard him and given a decision."*

AND WHEREAS, the respondent has also filed a review Application on 28/01/2019 and subsequent reminder dated 29/07/2019 to review the order dated 05/12/2018 passed by GCZMA.

AND WHEREAS, in the 210th GCZMA meeting held on 07/08/2019 it was decided as follows: *"the Authority noted that the respondent was not present for the hearing. The Authority decided to give him an opportunity for another hearing. The next date of personal hearing before the Authority is scheduled on 24/08/2019 (11.00am) onwards."*

AND WHEREAS, the matter was placed for personal hearing in the 211th GCZMA meeting held on 24/08/2019. The proceedings held in the said meeting are as follows: *"Complainant Mrs Judith Almeida remained present in person. Advocate appeared on behalf of respondent. Advocate on behalf of respondent submitted the*

additional documents in the said matter with a copy to the complainant. The complainant sought additional time to argue on the additional documents submitted by the respondent."

AND WHEREAS, in the 211th GCZMA meeting held on 24/08/2019 it was decided as follows: *"The Authority took note of the submissions made by the party. Accordingly the authority decided to grant additional time to the complainant. Matter is adjourned to give fresh opportunity to the complainant."*

AND WHEREAS, the matter was placed for personal hearing in the 215th GCZMA meeting held on 22/10/2019. The proceedings held in the said meeting are as follows: *"Complainant Judith Almeida was present. Advocate appeared on behalf of respondent and stated that he filed review on ground of procedural review and submitted synopsis. Respondent stated that as per the order passed by the Authority in said meeting the members present for meeting are not designated persons as per the Notification. and also there is no powers to delegate powers to other official. advocate produced 2 reports of surveyor dated 02/03/2019, 3/8/2019 to show that the structure falls in the survey no. 24/2, 9, 11, 12 of Colva village are prior 1991. The issue of Resjudicata was raised on 24/08/2019. Complainant placed written arguments before the Authority. Complainant stated that conversion sanad of survey no. 24/2, 11 and 12 has not produced by the respondent. She further stated that the issue of quorum was dismissed by Hon'ble Supreme Court. complainant prayed to dismiss the review application and further stated that report of Alwyn is illegal and tailor made and should not be considered."*

AND WHEREAS, in the 215th GCZMA meeting held on 22/10/2019 it was decided as follows: *"Matter was taken up for deliberation before the Authority on the application of review filed by the Respondent on 28/01/2019. The said proceedings have been reopened on the basis of the opinion given by the Ld. Adv. General of the State of Goa to hear the parties & thereafter to arrive at a conclusion as to whether 'Review' is permissible or not. The Respondent has based his entire review application on two factors i.e. the quorum as required under the Notification dt.26/10/2016 of the MoEF &CC had not in effect met with & that there were representatives of the Authority which is not permissible as a delegator cannot sub-delegate his powers & to this argument/submission the Respondent has relied upon three authorities of the Courts of record. On this count the Authority was of the opinion that this issue was already agitated upon in the Hon'ble High Court as well as before the Apex Court to*

which the courts have not conceded to the plea of the Appellant & hence the reliefs sought for were rejected.

The second contention was on the aspect of procedural review which of course can be granted provided that the Authority has skipped off vital document or has lapsed from following due process to arrive at a decision. In the matter of *Sayed Muzaffar Ali V/s. Municipal Corporation of Delhi* reported on 1995 Supp(4) SCC 426 it has held that demolition of any illegal structure should be the last resort until & unless all attempts/means for regularization of unauthorized/illegal construction are explored & only than such a step can be taken. In the current case the scope for regularization is out of question as the Environment Protection Act as well as the CRZ Notification of 1991 or 2011 does not provide for protection to commercial establishments nor that it provides to give any scope for ex-post facto approvals. The silver lining of this judgement of *Syed Muzaffar Ali V/s. MCD* & the judgement in *W.P. No.702/18* of our very own High Court is that by having a harmonious reading between the two all steps/means should be exhausted before demolishing any alleged illegal construction. For this purpose the Authority was required to follow all such procedural steps/needs to arrive at a decision.

In the backdrop of the decision taken by this Authority in it's 187th Meeting one major procedural lapse that has been conducted is on the aspect of ground truthing of the structures viz-a viz the documents produced by the Respondent. Non mention of the survey number on the approved plans of the Town & Country Planning Department & that too of the year 1980 could have very well been ascertained through the DLC/DSLRL. As per the 2011 CRZ Notification reports of the DLC headed by the Collector are significant which has not been obtained by the Authority & it has blindly on premises and surmises concluded that since survey number isn't mentioned in the approved plans the legality of the structure in question is doubtful without ascertaining if the plans produced by the Respondent are in conformity to the structures on loco & that too by doing ground truthing through the DLC who would have engaged the services of DSLRL.

The Authority was thus of the opinion that this is a fit case of procedural lapse/review & it was of the view that the report of the DLC is essential to check whether the structures existing on loco are in conformity with the approved plan of the Town & Country Planning Department which bears No.DJ/1930/5406/80 dt.22/08/1980 by taking on board the local body into consideration as well & upon obtaining the report to hear the parties afresh by issuing notices thereof."

AND WHEREAS, the matter was placed for personal hearing in the 225th GCZMA meeting held on 04/06/2020. The proceedings held in the said meeting are as follows: *"The complainant reiterated her arguments which have been narrated above by stating that the question of doing the job of ground truthing was not at all required because the GCZMA had done the exercise way back in 2005-06. She stated that for the purpose of carrying out any construction the pre requisite of obtaining a conversion Sanad in terms of section 32 of the LRC is a must. In the current case with the exception of property bearing survey no. 24/3 of village Colva within which there was a small bungalow, none of the other properties have been converted. She further stated that the Authority in its 187th meeting held on 31/10/2018 has taken a conscientious decision to demolish all the structures located in property bearing survey no. 24/2, 24/3, 24/11 and 24/12 which decision has been upheld right up to the Supreme Court of India. She argued to say that the Authority cannot retract its decision in the guise of procedural review because when the subject matter has been decided in finality the principles of Res Judicata would stand to get attracted. She went on to state that the plans and license that have been produced have no mention of the survey number of the property and hence the question of the said structures being of the period prior to 1991 is questionable and doubtful. She strenuously argued on one aspect which is on the aspect of Res Judicata.*

The respondent Counsel submitted that the question of complainant raising the issue of the applicability of the principles of Res Judicata does not arise as the application for re opening of the proceedings on the grounds of the procedural review has already been allowed by the Authority in its 215th meeting . Re agitating on this aspect would not be appropriate is what the counsel for the respondent stated because the complainant herself has knocked the doors of Hon'ble NGT in O.A No. 102/2019 (WZ) Pune Bench and vide order dated 18/03/2020 the Hon'ble NGT has observed that since a proceeding is underway before he GCZMA in respect of the matter, it would be improper on the part of the Hon'ble NGT to interfere until such proceeding culminates. He submitted that despite the respondent being in the possession of the requisite permissions/approvals from various authorities merely because of non mention of survey number on the said permissions the Authority had driven itself to pass directions to demolish without even ascertaining through the surveyors as to whether the said approved plans/structures were of the era prior to 1991. He stated that the plans /permissions /approvals given to the Respondent is not disputed & all what the Complainant harps upon is non-mention of the Survey number on the said approvals. Having done the process of ground truthing, the Authority has now received the report which clearly establishes that the structures of the Respondent

were of the period prior to 1991 & that the same is in consonance with the approved plan of Town & Country Planning Department bearing NO.DJ/1930/5406/80. He thus prayed that the decision taken in the 187th meeting of this Authority be re-looked & the same be suitably amended.

AND WHEREAS, in the 225th GCZMA meeting held on 04/06/2020 it was decided as follows: *"The Authority after hearing the arguments decided to call upon the parties afresh to hear arguments on the aspect of procedural review and as to how and in what manner the review would lie or not before the Authority to revisit it's decision taken in the 187th Meeting held on 30/10/2018. The said matter is fixed for hearing on 03/07/2020 at 10.30 a.m. onwards"*.

AND WHEREAS, the matter was placed for personal hearing in the 227th GCZMA meeting held on 17/09/2020. The proceedings held in the said meeting are as follows: *"The Complainant submitted that the Authority has carried out an intense study before passing of the directions in its 187th meeting held on 30/10/2018. These directions have been assailed by the Hon'ble NGT as well as by the Hon'ble Supreme Court of India and hence the principle of Res Judicata is applicable is what the complainant stated. The question of review would not arise on the premise that ground thruthing wasn't being done in the past because the Authority itself had done this exercise way back in 2006. The plans than prepared could have been put to use by the Authority without going for a fresh exercise in the garb of review. She stated that the exercise carried out by the Authority is bereft of any provision of law & hence the same ought to stopped forthwith as there won't be end to litigation if such a stance is allowed by the Authority. She hence prayed that the directions given through the 187th meeting held on 30/10/18 be maintained & the offending structure be demolished.*

Responding to these arguments the Counsel appearing for the Respondent submitted that in the first place the Authority was required to issue a show cause notice upon him before passing any directions which was never done & hence on this count itself the Authority has lapsed in following the procedure. He stated that apart from the notice of personal hearing he hasn't received any other notice in the nature of show cause. As regards the issue of review whether it is tenable or not, the Respondent stated that the Authority in its 215th meeting held on 22/10/19 has already allowed the application for review & hence the question of re-agitating on this aspect time & again would not arise. He submitted that all what was required to be ascertained is as to whether the various documents which has been relied upon by the Respondent which bears the stamp of approval of different statutory authorities & only because the survey number was not indicated on these approvals the Authority had

come to the conclusion that the offending structures were illegal. Further to that the Respondent stated that the report of the ISLR Salcete who has done the ground thruthing clearly spells out that the structure as shown in the approved plans which are prior to 1991 are in-sync with the present position on loco & that there is no deviation. He hence prayed that the decision taken in the 187th meeting of the Authority be re-visited & the directions passed therein be rescinded."

AND WHEREAS, in the 227th GCZMA meeting held on 17/09/2020 it was decided as follows: "Authority heard the matter, Kept for orders."

AND WHEREAS, the matter was placed for personal hearing in the 238th GCZMA meeting held on 26/11/2020. The proceedings held in the said meeting are as follows: "The Complainant present. Ld Adv for the Respondent present. Both parties filed the written argument. Heard the matter."

AND WHEREAS, in the 238th GCZMA meeting held on 26/11/2020 it was decided as follows: "The Authority kept the matter for orders."

AND WHEREAS, in the 248th Meeting held on 11/02/2021 the draft copy the order is placed in the authority meeting for consideration and for approval of the Authority.

AND WHEREAS, the matter was discussed and deliberated in the 253rd GCZMA meeting held on 04/03/2021. The proceedings in the said meeting can be seen as follows: "The present matter is interalia *Suo Moto* cognizance of Hon'ble High Court of Bombay at Goa, Panaji about the illegalities/constructions in CRZ area. The Hon'ble High Court of Bombay at Goa vide Order dated 26/09/2007 passed in the matter of *Suo Moto Writ Petition No.02/2006* had directed all Panchayats /Municipalities to submit action taken report with regard to constructions in NDZ/CRZ area as per terms mentioned therein along with an affidavit.

Pursuant to the decision taken by the Authority in its 187th GCZMA meeting held on 30/10/2018; directions were issued by GCZMA to Hotel Silver Sands to demolish all structures vide order bearing No. GCZMA/SMWP/02/06/1657 dated 05/12/2018. the affected party approached Hon'ble High Court of Bombay at Goa to challenge the said demolition order bearing WP No. 171 of 2019.

The Respondent has also filed a review Application on 28/01/2019 and subsequent reminder dated 29/07/2019 to review the order dated 05/12/2018 passed by GCZMA. The said matter was placed during 210th GCZMA meeting held on

07/08/2019 wherein the Respondent was absent. Authority decided to take up the matter in its next Meeting.

The said matter was placed on 211th GCZMA meeting held on 24/08/2019 wherein the Authority took note of the submissions made by the party. Accordingly the Authority decided to grant additional time to the Complainant. Matter is adjourned to give fresh opportunity to the Complainant.

The said matter was placed on 215th GCZMA meeting held on 22/10/2019. Matter was taken up for deliberation before the Authority on the application of review filed by the Respondent on 28/01/2019. The said proceedings have been re-opened on the basis of the opinion given by the Ld. Adv. General of the State of Goa to hear the parties & thereafter to arrive at a conclusion as to whether 'Review' is permissible or not. The Respondent has based his entire review application on two factors i.e. the quorum as required under the Notification dt. 26/10/2016 of the MoEF&CC had not in effect met with & that there were representatives of the Authority which is not permissible as a delegator cannot sub-delegate his powers & to this argument/submission the Respondent has relied upon three authorities of the Courts of record. On this count the Authority was of the opinion that this issue was already agitated upon in the Hon'ble High Court as well as before the Apex Court to which the courts have not conceded to the plea of the Appellant & hence the reliefs sought for were rejected. The second contention was on the aspect of procedural review which of course can be granted provided that the Authority has skipped off vital document or has lapsed from following due process to arrive at a decision. In the matter of Sayed Muzaffar Ali V/s. Municipal Corporation of Delhi reported on 1995 Supp(4) SCC 426 it has held that demolition of any illegal structure should be the last resort until & unless all attempts/means for regularization of unauthorized/illegal construction are explored & only then such a step can be taken. In the current case the scope for regularization is out of question as the Environment Protection Act as well as the CRZ Notification of 1991 or 2011 does not provide for protection to commercial establishments nor that it provides to give any scope for ex-post facto approvals. The silver lining of this judgement of Syed Muzaffar Ali V/s. MCD & the judgement in W.P. No.702/18 of our very own High Court is that by having a harmonious reading between the two all steps/means should be exhausted before demolishing any alleged illegal construction. For this purpose the Authority was required to follow all such procedural steps/needs to arrive at a decision.

In the backdrop of the decision taken by this Authority in it's 187th Meeting one major procedural lapse that has been conducted is on the aspect of ground truthing of

the structures viz-a viz the documents produced by the Respondent. Non mention of the survey number on the approved plans of the Town & Country Planning Department & that too of the year 1980 could have very well been ascertained through the DLC/DSLRL. As per the 2011 CRZ Notification reports of the DLC headed by the Collector are significant which has not been obtained by the Authority & it has blindly on premises and surmises concluded that since survey number isn't mentioned in the approved plans the legality of the structure in question is doubtful without ascertaining if the plans produced by the Respondent are in conformity to the structures on loco & that too by doing ground truthing through the DLC who would have engaged the services of DSLR.

The Authority was thus of the opinion that this is a fit case of procedural lapse/review & it was of the view that the report of the DLC is essential to check whether the structures existing on loco are in conformity with the approved plan of the Town & Country Planning Department which bears No.DJ / 1930 / 5406 / 80 dt.22/08/1980 by taking on board the local body into consideration as well & upon obtaining the report to hear the parties afresh by issuing notices thereof.

The Authority during 225th meeting held on 04/06/2020 after hearing the arguments decided to call upon the parties afresh to hear arguments on the aspect of procedural review and as to how and in what manner the review would lie or not before the Authority to revisit it's decision taken in the 187th Meeting held on 30/10/2018. The said matter is fixed for hearing on 03/07/2020 at 10.30 a.m. onwards.

The Complainant submitted that the Authority has carried out an intense study before passing of the directions in its 187th Meeting held on 30/10/2018. These directions have been assailed by the Hon'ble NGT as well as by the Hon'ble supreme court of India and hence the principle of Res Judicata is applicable is what the Complainant stated. The question of review would not arise on the premise that ground thruthing wasn't being done in the past because the Authority itself had done this exercise way back in 2006. The plans then prepared could have been put to use by the Authority without going for a fresh exercise in the garb of review. She stated that the exercise carried out by the Authority is bereft of any provision of law & hence the same ought to stopped forthwith as there won't be end to litigation if such a stance is allowed by the Authority. She hence prayed that the directions given through the 187th Meeting held on 30/10/18 be maintained & the offending structure be demolished.

Responding to these arguments the Counsel appearing for the Respondent submitted that in the first place the Authority was required to issue a show cause

notice upon him before passing any directions which was never done & hence on this count itself the Authority has lapsed in following the procedure. He stated that apart from the notice of personal hearing he hasn't received any other notice in the nature of show cause. As regards the issue of review whether it is tenable or not, the Respondent stated that the Authority in its 215th Meeting held on 22/10/19 has already allowed the application for review & hence the question of re-agitating on this aspect time & again would not arise. He submitted that all what was required to be ascertained is as to whether the various documents which has been relied upon by the Respondent which bears the stamp of approval of different statutory authorities & only because the survey number was not indicated on these approvals the Authority had come to the conclusion that the offending structures were illegal. Further to that the Respondent stated that the report of the ISLR Salcete who has done the ground thruthing clearly spells out that the structure as shown in the approved plans which are prior to 1991 are in-sync with the present position on loco & that there is no deviation. He hence prayed that the decision taken in the 187th Meeting of the Authority be re-visited & the directions passed therein be rescinded.

The Authority deliberated on the issues concerning the offending structure & two of the Expert Members namely Mr. Savio Correia and Mr. Flaviano Miranda abstained from proceedings.

Mr. Mahesh Patil Expert Member stated it is part of procedural aspect whether to allow the case to be heard and investigated. Further stated that the Hotel Silver Sand existed much before enactment of CRZ regulations and has some base of existence however if there are extensions/expansions to the originally approved/sanctioned plan, then the Authority to take appropriate action".

AND WHEREAS, in the 253rd GCZMA meeting held on 04/03/2021 it was decided as follows: "It was brought to the notice of the members that the current proceedings were unique in as much as unlike other cases the Respondent possessed the requisite permissions & approvals to construct the commercial structure way back in the year 1978, 1980 & 1984 even the final occupancy has been given to him in the mid of 1980's. This by itself was conclusive proof of evidence to establish the fact that the alleged offending structure was an authorized structure existing much prior to the CRZ Notification of 1991. The deliberations held in the 187th Meeting was cantered towards the fact that the survey number was not finding a mention on the said approvals. Ispo-facto the Authority could have affirmed this fact by conducting an inspection as is otherwise done in other cases. Although this would not be a procedure that is mandatorily required to be followed, the primordial concern is as to whether

the Authority had lapsed in any manner whilst performing its functions. Rule 4(3-a) of the Environment Protection Rules 1986 inter-alia reads as "The person, officer or authority to whom any direction is sought to be issued shall be served with a copy of the proposed direction & shall be given an opportunity of not less than 15 days from the date of service of a notice to file with an officer designated in this behalf the objections, if any, to the issue of the proposed direction". From the records available in the file which were also perused by the members, no such show cause notice has been issued pin-pointing as to against which structures the Authority intends to take action. There is only a notice of personal hearing issued from time to time which culminated into passing of the final decision in the 187th Meeting. This was one of the fatal flaw in the proceedings. The Respondent has way back in the year 1981 purchased the property from the erstwhile owner namely Vinod Gosalia which clearly mentions the construction Hotel Silver Sands on page 56 of the said sale deed. Thereafter the Respondent has also purchased some other properties in the year 1984 so as to facilitate the construction of the Hotel in a proper manner. The structures so reflecting on the survey plan and the one which is existing on date would obviously be different because the old structures have been demolished to pave way for construction of the hotel and from the mid of 1970's till the CRZ Notification 1991 came into being there was no fresh survey conducted so as to get the hotel structure reflecting in the survey plan. The voluminous documentary evidence more specifically the approved plans having the stamp of approval from the various departments much prior to 19/2/1991 is substantial proof to indicate that the offending structure was existing much before the CRZ norms could come into force. The ground truthing report when superimposed on these approved plans indicate that some structures have been constructed which are not having the approvals of the Authority nor by any other approving/licensing body. These are identified in green colour by the officials of the Inspector of Survey and Land Records, Salcete should nevertheless be demolished. The decision taken by the Authority in it's 187th Meeting is partly rescinded to the extent that the additional structures constructed by the Respondent which are not part of the approved plans which are identified by the ISLR Salcete through the ground truthing report be demolished and not the entire structure as a whole. The proceedings stands disposed off."

AND WHEREAS, in furtherance to the Meeting No 253rd dated 04/03/2021 in respect of Hotel Silver Sand, Colva, Salcete, Goa the matter was placed for further discussion and deliberation. The Authority deliberated that the Authority during its 225th Meeting held on 04.06.2020 had decided to call upon the parties afresh to hear arguments on the aspect of procedural review and as to how and in what manner the

review would lie for the Authority to revisit its decision taken in the 187th Meeting held on 30.10.2018. After hearing the parties, it was realized that certain intricate facts pertaining to the matter may not have been brought forth before the Authority in its 187th Meeting held on 30.10.2018. The Respondent brought on record the requisite permissions and approvals to prove that the commercial structure in question is legal and authorized. The Respondent also raised doubts as to the procedures followed by the Authority before passing the final decision in its 187th Meeting. Therefore, it was decided that the order of demolition passed in the 187th Meeting should be rescinded in view of vital facts and documents coming to light subsequently. However, the question as to whether the Authority has power to review its decision taken in the 187th Meeting is yet to be decided by this Authority finally, considering that the matter has been decided by Hon'ble Supreme Court in its appellate jurisdiction.

AND WHEREAS, in the 254th GCZMA meeting held on 18/03/2021, it was decided to issue fresh notices to both parties to appear before this Authority on 08.04.2021 at 3.30pm to hear on maintainability of the review application dated 29.01.2019 along with their written submissions.

AND WHEREAS, in the 268th meeting held on 19/08/2021, the authority heard the Respondent and directed the Respondent to come clear on the maintainability of the review application. The written submission submitted by the Respondent does not speak about the maintainability of the review application. The matter is fixed on 26/08/2021 for arguments on the maintainability of the review application of the Respondent. However, the said meeting is postponed to 02/09/2021 at 3.30 pm.

AND WHEREAS, in the 270th meeting held on 02/09/2021, none of the parties remained present. The authority decided to adjourn the matter and issue fresh hearing notices to the parties to remain present for hearing. The Member Secretary brought to the notice of Authority that the next date of hearing before Hon'ble NGT (Pune) in said matter is 22/10/2021. Fresh hearing notices are issued to both the parties.

AND WHEREAS, in the 271st GCZMA meeting held on 21/09/2021, Adv Nachinolkar present for the Respondent, Complainant absent, Complainant sent mail stating her personal difficulties to attend the hearing and stated that she has already filed her written submissions and further requested that if any written submissions are

filed by the Respondent the copy of the same may be communicated to the Complainant. The Adv for the Respondent Submitted that he has filed his written submissions and he is relying on same. The Respondent stated that the issue of review has already been decided by this authority in 187th meeting and same cannot be revisited by this authority again. The Authority heard the parties and posted the matter for orders on the maintainability of Review application.

AND WHEREAS, in the 276th GCZMA the GCZMA meeting, held on 21/10/2021 and 23/10/2021 the matter was kept for final discussion and deliberation it was decided as follows:- *"The Authority considered arguments of Applicant/Original respondent on the aspect of procedural review and as to how and in what manner the review would lie or not before the Authority to revisit its decision taken in the 187th Meeting held on 30/10/2018 particularly in the backdrop of Hon'ble Supreme Court's dismissal on Civil Appeal no. 216/2019. None appeared for the respondent/original complainant, however, written submissions are filed.*

Adv Nachinolkar submissions can be summarised as follows: (a) that this Authority had allowed the Review Application in its 253rd meeting held on 04/03/2021 and the present proceedings amount to further Review which is not permissible, and (2) the doctrine of merger would not apply to the Hon'ble Supreme Court's order dated 18.01.2019 in Civil Appeal no. 216/2019, and hence this Authority has jurisdiction to entertain the Review.

Succinctly, the respondent/original complainant's case as culled from their written submission is that this Authority's decision taken at 187th meeting has merged with the order of Hon'ble Supreme Court and attained finality; this Authority has no jurisdiction to review after Hon'ble Supreme Court has decided the controversy in civil appeal; the Review Application does not meet the requirements of CPC and Limitation Act and finally, that by entertaining the review plea, this Authority is interfering with Hon'ble Supreme Courts review powers under Art 136 of the Constitution.

In the light of the factual matrix of this case narrated above and the rival contentions, the following issues crystallize for the Authority's determination:

- (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 187th meeting held on 30/10/2018?*

(M)

- (3) *Whether the applicant/original respondent suppressed a material fact from this Authority regarding the filing and 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)?*

Issue no. 1: *It is true that at the 253rd meeting on 04.03.2021 the Authority upon hearing the parties and discussions, had decided to modify its decision taken at the 187th meeting, and concluded that only certain structures identified in green colour in the ISLR Salcete map had to be demolished.*

However, immediately thereafter, it came to the notice of the Authority that the issue of maintainability of the Review Application in backdrop of the dismissal of Civil Appeal by Hon'ble Supreme Court and consequent applicability of the doctrine of merger had not been dealt with and decided by the Authority while disposing the review application. Prior to the communication of the said decision and its uploading on the Authority's website, this Authority at its very next meeting i.e., the 254th meeting on 18.04.2021, decided to issue a fresh notice of personal hearing to the parties to hear them on the aspect of procedural review and as to how and in what manner the Review would lie or not before the Authority to revisit its decision taken in the 187th Meeting held on 30/10/2018.

It is well settled that a quasi-judicial authority will become functus officio only when its decision is pronounced or notified or communicated to the party concerned. Prior to that, nothing prevents an authority from altering or correcting the decision. Hence the Authority rejects the submission of the Applicant/Original respondent on this count.

Issue no. 2: *This Authority had decided the matter at its 187th meeting on 30.10.2018 and issued directions u/s 5 of Environment Protection Act for demolition of all structures existing in the property being in violation of CRZ Notification. The applicant/original respondent escalated the matter to the Hon'ble National Green Tribunal by way of appeal. Hon'ble National Green Tribunal was pleased to dismiss the appeal vide its order dated 03.01.2019 in Appeal no. 79/2018 (WZ). The Applicant/Original respondent then approached the Hon'ble Supreme Court in appeal. Hon'ble Apex Court admitted the appeal in its civil appellate jurisdiction (Civil Appeal no. 216/2019) and, after hearing the parties, was pleased to dismiss the appeal by order dated 18.01.2019. In this factual background, it is clear that the decision of this Authority at its 187th meeting merged with the order of Hon'ble National Green Tribunal dated 03.01.2019 in Appeal no. 79/2018 (WZ), which in turn merged with the order of Hon'ble Supreme Court dated 18.01.2019 in Civil Appeal no. 216/2019. In*

the Authority's opinion, the doctrine of merger clearly comes into play, and this Authority's decision taken at 187th meeting has merged with the Hon'ble Supreme Court's decision in Civil Appeal no. 216/2019.

Coming to the core issue, the question of whether a petition seeking review of a judgment against which the civil appeal has already been dismissed by Supreme Court is maintainable is no longer res integra. In a recent judgment dated 01.03.2019, a 3-judge bench of Hon'ble Supreme Court, in Khoday Distilleries v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd (2019) 4 SCC 376, while reaffirming its decision in Kunhayammed and Others v. State of Kerala ruled (at para 27 (b) (vi) & (vii)) that:

"Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked, the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation. On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court, the jurisdiction of the High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 CPC."

This Authority thus concludes that it has no jurisdiction to entertain review of its decision taken at the 187th meeting in light of the aforesaid precedent.

Issue no. 3: A party who seeks equity must come with clean hands. In course of the hearing, it was brought to our notice by the original complainant that – after the dismissal of the Civil Appeal by Hon'ble Supreme Court – along with the Review Application before this Authority, the applicant/original respondent simultaneously filed a Review petition before the Hon'ble National Green Tribunal on identical grounds, which Review Application bearing no.01/2019 in Appeal bearing no.79/2018 (WZ) came to be dismissed on 01.05.2019. The fact of filing the said Review Application bearing no.01/2019 in Appeal bearing no.79/2018 (WZ) before Hon'ble National Green Tribunal and its eventual dismissal was concealed and suppressed by the applicant/original respondent from this Authority. This fact was very material and relevant to these proceedings; had the Authority been made aware of it earlier, it would have dismissed the Review plea in limine. Such sort of forum hunting and abuse of the process of this Authority deserves to be deprecated.

In conclusion, and in light of the foregoing discussions, the Authority does not find any merit in the Review application filed by the applicant/original respondent, and the same stands dismissed. Proceedings closed".

(M)

NOW THEREFORE, the GCZMA in exercise of the powers conferred under Section 5 of the Environment (Protection) Act, 1986 (Central Act 29 of 1986) read with sub-rule (3) (a) of Rule 4 of the Environment (Protection) Rules 1986, and read with power vested with the GCZMA vide Order S.O. 3975 (E) dated 31/10/2019 issued by the Ministry of Environment & Forests, Government of India, hereby dismisses the Review Application filed by **HOTEL SILVER SANDS, COLVA BEACH, COLVA, SALCETE GOA** and directs **HOTEL SILVER SANDS, COLVA BEACH, COLVA, SALCETE GOA** to demolish all the structures in property bearing Survey no's 24/2, 24/3, 24/11 and 24/12 of Colva village, Salcete-Goa within 30 days interms of order dated 05/12/2018. The Dy. Collector & S.D.O, Salcete, Margao, Goa to verify whether structures referred to above are demolished, by the violator within stipulated time. In case the said directions are not complied, Dy. Collector & S.D.O, Salcete, Margao, Goa shall demolish structures as referred above in property bearing Survey no's 24/2, 24/3, 24/11 and 24/12 of Colva village, Salcete-Goa and land is to be restored to its original condition. Further Dy. Collector & S.D.O, Salcete, Margao, Goa also, recover the expenses incurred as the arrears of land revenue. The Dy. Collector & S.D.O, Salcete, Margao, Goa to submit a compliance report.

**For and on behalf of the
Goa Coastal Zone Management Authority**



(Dasharath M Redkar)
Member Secretary (GCZMA)

o/c

To,

HOTEL SILVER SANDS, COLVA BEACH, COLVA, SALCETE GOA.

Copy to:-

1. **The Collector & District Magistrate (South), Office of the Collector (South), Mathany Saldhana Administrative Complex, Margao-Goa... for information and necessary action.**
2. **The Deputy Collector & S.D.O of Salcete, Office of the Dy. Collector & S.D.O, Salcete, Margao-Goa... to ensure strict compliance as per above and interms of order of GCZMA.**
3. **The Secretary, Village Panchayat of Sernabatim, Vanelim, Colva and Gandaulim, Salcete-Goa... who is required to assist the Dy. Collector & S.D.O Salcete in enforcing the abovementioned directions.**
4. **Colva Civic & Consumer Forum, C/o Mrs Judith Almeida, Hno.257/1, Ward 3, Bagdem, Colva, Salcete-Goa... for information.**

32

5. **The Scientific Assistant, Goa Coastal Zone Management Authority...to**
upload copy of this notice on GCZMA website immediately.

T.C.
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