

BEFORE THE NATIONAL GREEN TRIBUNAL

(WESTERN ZONE) BENCH, PUNE

APPLICATION NO. 74/2013

CORAM :

Hon'ble Shri Justice V.R. Kingaonkar

(Judicial Member)

Hon'ble Dr. Ajay A. Deshpande

(Expert Member)

B E T W E E N :

Mr. Filomeno Vincente Gregorio
Tomaturgo Rodrigues,
s/o.late Andre Santana Rodrigues,
aged 60 years, R/o. H.No.259,
Francis Costa Vaddo, Utorda,
Salcete - Goa

.....APPELLANT

... VERSUS ...

1 The State of Goa

Through The Chief Secretary,
Secretariate, Porvorim,
Bardez, Goa.

2 Goa Coastal Zone Management Authrity,

Through : Member Secretary,
Office at Saligao, Bardez, Goa.

.....RESPONDENTS

Counsel for Appellant :

Mr. S.M. Walawaikar, Adv and

Counsel for Respondents :

Mr. Dattaprasad Lawande and
Mr. Kaif Noorani, Advs.

Date: 26-10-2013

J U D G E M E N T

1 We have heard Learned Counsel of the parties.

2 The present appeal is being disposed of at the stage of admission itself in view of the peculiar facts and circumstances.

3 This appeal is directed against a Show Cause Notice issued to the Appellant by the Respondent No.2-GCZM Authority. The Show Cause Notice dated 8th April 2013 (Annexure "A") is issued for calling upon the Appellant's say as to why certain directions as per Rule No.4 of the Environmental (Protection) Rules 1986 if no satisfactory explanation is given by the Appellant be issued. The Appellant was called upon to give explanation regarding legality of construction indicated in the Show Cause Notice.

4 Perusal of the Show Cause Notice, reveals that seven (7) constructions were shown to be existing in Survey No.53/6 of village Torada, within 100 metre from High Tide Land (HTL) of the river/Sea. It is the case of the Respondent that the said construction falls within No Development Zone NDZ.

5 We do not think it proper to give any finding on merits of the case, because it may prejudice either of the party while deciding the facts by the Respondent No.2-Authority after collecting due evidence. The Counsel for Respondents states that small Committees are being now formulated, as per directions of this Tribunal. He further submits that without prejudice to the present Appeal, the reply of the Appellant will be considered on merits, independently, and hearing will be given to the appellant. We, clarify that in the previous order, which was passed by consent of the parties on 13th March 2013, in Appeal No.59 of 2012, no finding on merits was recorded in respect of any of the property shown in the Show Cause Notice and the Tribunal had never concluded that those constructions violate CRZ Notification. That issue was completely left to the inquiry to be conducted and the finding of the Respondent No.2-Authority. The Respondent No.2 was, therefore, required to make due inquiry in this behalf and give fact finding, after issuing the Show Cause Notice. Since the Appeal is only against the Show Cause Notice, we do not find it to be maintainable, because the appellant has legal right to representation through reply. The

Appellant shall be given due hearing by the Respondent No.2-Authority before recording the finding and passing of the final order. The Appellant, however, shall remain present before the Authority after receipt of the Notice on the date of hearing and failure of the Appellant on two (2) occasions to appear may entail forfeiture of his right, in case, the Authority does not deem it proper to grant any further time. However, sufficient time of not less than three (3) weeks shall be granted by the Authority to the Appellant for the purpose of hearing. The appeal is accordingly disposed of.

No costs.

....., **JM**
(V. R. Kingaonkar)

....., **EM**
(Ajay A. Deshpande)

NGT

