

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE**

APPLICATION NO.122 OF 2014

CORAM:

HON'BLE MR. JUSTICE U.D.SALVI
(Judicial Member)

HON'BLE DR. NAGIN NANDA
(Expert Member)

In the matter of:

1. Mr. Desmond Jude D'souza,

Son of Mr. Camillo Caridade D'Souza,
Age 50 years, Married, Indian national,
Business and resident of house No.776,
St. Micheal Waddo, Anjuna Bardez Goa
North Goa Pin Code-403509.

2. Mr. Jayprakas Audumber Sirsaikar

Son of Mr. Audumber Sirsaikar,
Age 35 years of age, unmarried,
Business, Indian national and
Resident of House No.64/71,
Badem, Assagao, Anjuna Bardez Goa
North Goa District Pin Code-403509

.....**APPLICANTS**

VERSUS

1. State of Goa,

Through Chief Secretary,

Having its office at
Secretariat,
Porvorim Bardez, Goa.

2. The Member Secretary,

Goa State Pollution Control Board,
Government of Goa,
Dempo Tower, Patto,
Panaji, Tiswadi, Taluka Goa

3. Director,

Department of Tourism,
Having their office at Patto,
Panaji, Tiswadi, Taluka Goa

4. Goa Coastal Zone Management Authority,

Through its Member Secretary,
Department of Science Technology and
Environment, Opp. Saligao Seminary,
Saligao, Bardez Taluka Goa.

5. Sarpanch/Secretary

Village Panchayat of Anjuna,
Having their office at village Anjuna,
Bardez Taluka Goa.

6. Administrator of Comunidade,

North Zone, having its office at
office at
Comunidade Building,
Altino, Near Civil Court Junction,
Mapusa Bardez, Goa.

7. Comunidade of Anjuna,

Through its Attorney,
Having their office at Nearst. Micheal
Church, Anjuna, Bardez Taluka G

8. Percept Live Private Limited,

A Company Registered under the
Companies Act, 1956,
Having their registered address,
At P-22, Raghuvanshi Estate,
11/12, S.B.Marg, Lower Parel (West)
Mumbai-400013.

9. M/s. Sunset Getaways

Having their address at
G-1, Alisha Apartments,
Nagali Hills, Dona Paula,
Goa-403004.

10. Mr. Lyndon Alves,

Proprietor of M/s Sunset Getaways
Having their address at
G-1, Alisha Apartments,
Nagali Hills, Dona Paula,
Goa-403004.

.....**RESPONDENTS**

Counsel for Applicant(s):

Shilpa Pratap, Varsha Waghole, Mr. Jayprakash Shirsai, Mr. Vinayak D. Porob, Mr. Aancil Mani, Mr Arjun F. Naik, Shweta B. Borkar, Adv,

Counsel for Respondent(s):

Mr. Dattaprasad Lawande, Addl. AG, Mr. Aurobindo Games Pereira AGA, Mr. Anogh V. Prabhudesai AGA, Mr. Raaghuvendra Karangutkar, Sapna Mordekar, Fawia M. Mesquita for Respondent Nos. 1 to 4.

Supriya Dangare for Responent No.5

Mr Jitendra Supekar, Ms Meherji, for Respondent No.7

Mr Pankaj P.Pai-Vernekar, Ms Yulette Coutintto, for Respondent No.8.

DATE: 13th February, 2018.

J U D G M E N T

Per Dr. Nagin Nanda, EM

1. The Applicants, residents of village Anjuna are seeking permanent injunction, restraining hosting of 'Sun-Burn' celebration or any such event(s) and conducting, performing any musical shows/events of any nature,

erecting/constructing any structure of whatsoever nature in the property bearing Survey No.206/1 of village Anjuna, Bardez, district North Goa, Goa and for further directions to State of Goa to take action against Respondent-Authorities namely; Goa State Pollution Control Board (GSPCB), Department of Tourism, Goa, Goa Coastal Zone Management Authority (GCZMA), Sarpanch Anjuna and Administrator of Comunidade for illegally granting permissions/NOCs to such musical event(s). The Applicants are further seeking compensation of Rs.1Crore from Respondent-Authorities, corporate bodies and private individuals, arranging such event(s) and restoration of the property to its original position.

2. Applicant No.1-Desmond D'Souza is claiming to be property/Joneiro/ component of Comunidade of Anjuna- Respondent No.6 of village Anjuna, governed by the Code of Comunidade. The Applicants submit that certain properties in the village were reserved for grazing the cattle, goats etc. belonging to the people of village in the name of Comunidade and village organization formed properties erstwhile Portuguese Rule under the Code of Comunidade and these properties were not permitted to be used for any other purpose or commercial activity without consent of the Members of Comunidade, duly obtained as per the procedure contemplated under provisions of the

Code of Comunidade. According to the Applicants the property/land bearing Survey No.206/1, is one such property laying in close proximity to the Arabian Sea in No Development Zone (NDZ)/Eco Sensitive Zone (ESZ), regulated by CRZ Regulation,2011 and is grazing land, a natural source of grazing for the cattle, goats etc. of the villagers of village Anjuna. The Applicants submit that the Superintendent, Survey and Land Records issued letter dated 20th November, 2014, identifying location of the said property on the map indicating properties falling in the zone 200m to 500m from High Tide Line (HTL), vide annexure P-2, collectively annexed to the Application.

3. Though the Applicants have raised contentions regarding illegalities committed by the Managing Committee of Respondent No.6-Comunidade of Anjuna by issuing NOCs/permissions for conducting various event(s) namely; programmes, restaurants, stalls in the said property without obtaining consent of the Members of Comunidade, in accordance with provisions of the Code of Comunidade, particularly, in face of resolution of the General Board Meeting (GBM) or extra-ordinary GBM dated 27.4.2014 of Comunidade of Anjuna, not to issue NOCs/permissions to conduct any kind of event(s) in Comunidade without its consent, the prime concern for this Tribunal, is environmental degradation caused by

such event(s) arranged in contravention of CRZ Regulations.

4. The Applicants have raised the environmental issues in the present Application in the following words:

“The Applicants submit that the said property, more particularly described Survey No.206/1 of village Anjuna, falls in NDZ as per CRZ-Regulations and as such, no permission/licence for erecting any temporary structure or shacks/huts can be issued by any coastal village Panchayat vide directions issued by Respondent No.4-GCZMA, vide letter No.GCZMA/GN/MIC/14-15/726 dated 9.7.2014”.

5. The Applicants submit that the said property has porous soil and is like water-reservoir with wide biodiversity of plants with grass and tree-cover. The Applicants contend that before holding of event(s) of ‘Sun-Burn-2013’, the grass and vegetation on the said property was set on fire in order to make it appear as barren land, facilitating authorities to easily grant approvals for activities prohibited in the said area. The Applicants contend that as a result granting permissions for conducting various event(s) in the said property there has been a large scale of destruction of flora and fauna adversely affecting environment and biodiversity. The

Applicants contend further that in December, 2013, the Respondent Nos. 7 to 9, hosted event Sun-Burn-2013 and for that purpose many joint structures of temporary nature were erected without adhering to the Rule of Law and eventually many trees were cut down, hills chopped and made flat without obtaining permission required under Law. In the process, the Applicants submit that vegetation and animals in the said property met their end. The Applicants add that 'Sun-Burn-2013' Festival destroyed peace in the local with unbearable music of high volume in the range 300dB greatly exceeding prescribed parameters under the Environment (Protection) Act, 1986, played during event(s) and the said event(s) had caused air, dust, noise and environmental pollution on account of blatant violation of environmental laws. The Applicants submit that several complaints lodged by locals, including the report of Dr. Joe D'Souza submitted to Goa State Biodiversity Authority regarding the destruction caused on account of hosting of 'Sun-Burn-2013' event(s) need to be considered. The Applicants also referred to the complaint dated 21.2.2014 lodged by Trevor Mascaren has on the subject of destruction of environment at Vagator in venue of 'Sun-Burn' event.

6. The Applicants submit that the Department of Tourism had granted permissions to 'Sun-Burn-2013' on

certain conditions vide permission dated 29.11.2013 and there was no compliance of the said conditions by the organizers of the said event(s). The Applicants further submit that with huge crowd gathering for the said celebration or such event(s) the entire area gets covered with floating dust raised by movement of thousands of vehicles in the said area having narrow roads and noise generated loud music and dust so raised has adverse impacts on the health of local residents living in close proximity of the said area. The Applicants have also expressed grave concern about future use of the said property for such event(s) hosted for high profits in the name of culture unknown to Goa. It is for these reasons the Applicants submit that they have approached this Tribunal for the reliefs as stated hereinabove.

7. Only Respondent No.2 GSPCB, Respondent No.4 GCZMA and Respondent No.8 Percept Live Pvt Ltd –Project Proponent chose to file reply. Respondent No.2- GSPCB placed before us the inspection report of inspection and noise level monitoring done by it between 27.12.2014 and 30th December.2014 of the festival at site at Survey No.206/1 Vagator, Bardez, Goa, as part of affidavit dated 27.1.2015 at Ex. 'A' thereto. GSPCB submitted that the affidavit dated 27th January, 2015 was being filed for limited purpose of placing on record the report of

monitoring/inspection of 'Sun-burn' festival site as conducted by the officials of Respondent- Board in terms of 3rd directions/order dated 24th December, 2014 passed in the present case. It reveals that as per directions of the Member Secretary of GSPCB, the five member's team of officials comprising of Scientist-B, Scientific Assistant and three Laboratory Assistants conducted noise level monitoring of 'Sun-burn' EDM festival with sound level meter equipment namely; Sound Level Meter 2001, Acoustic calibrator 3022, Data-logging Sound Level Meter 2511, and Noise Meter at three (3) different locations namely; near the house of Applicant No.1 Desmond D'Souza located at Vagator behind Anjuna Police Station, Anjuna, Bardez, Goa approximately 500m away from boundary of Venue, near northern side boundary of the Venue surrounded by Hotels, Guest Houses, Cottages, Bars, Restaurants, Clubs etc. inside the Venue, and in front of the main stage (town temple) at Survey No.206/1, Vagator, Bardez, Goa between 27.12.2014 and 30.12.2014. According to GSPCB the organizers had installed five (5) temporary stages facing south or south-east site towards hilly area having elevation, as shown in the map annexed to the record as Annexure-1 and covered entire boundary of the Venue with metal sheets/metal nets approximately 4m in height; and the location of western

side of the Venue facing sea, and its entrance was situate on eastern side; and on the northern side of Venue were commercial activities. The report further reveals that the organizers have installed 45 numbers of 120 KVA, 4 Numbers of 62 KVA, 5 Numbers of 250 KVA and 2 Numbers of 500 KVA Diesel Generating (DG) Sets. The report ends with a note that noise level recorded exceeded the permissible limits but they are not exceeding the standards by more than 10db (A) and the organizers had stopped music before 10.00 p.m. between 27.12.2014 and 30.12.2014.

8. Respondent No.4 GCZMA controverted the case of the Applicants with specific denials and averred that on inspection of site by the Expert Member of GCZMA on 26.12.2014 it was found that site falls within 200m of HTL and noticed temporary wooden structure erected for the event. Respondent No.4 GCZMA further averred that same event was organized at the site during 2013, as per NOC/permission granted by GCZMA in its 96th Meeting held on 17th December, 2013 and due to paucity of time the said event was granted approval by circulation along the members of the Authority, subject to other general and specific conditions that the site should not be disturbed and restored to its original condition; and after due scrutiny of the Applications and inviting attention of

Respondent No.9-PP M/s Sunset Getaways to the order dated 23rd December, 2014 passed by the Tribunal, it granted NOC/permission to the festival vide letter dated 26.12.2014 at the said site and period and thereby permitted construction of temporary structure/stage for holding the said festival, subject to conditions listed therein and the said NOC/permission was further modified vide letter dated 29.12.2014 upon request to extent NOC/permission between 27.12.2014 till 30.12.2014 vide affidavit dated 8th September, 2015.

9. Respondent No.8 took exception to admission of the present Application vide affidavit dated 25th March, 2015, mainly on the grounds:

(1) Bar of limitation;

(2) Respondent No.8 being singled out and proceeded against it with malafide intention;

(3) The issue of grant of NOCs/Permissions to the festival by Comunidade of Anjuna, pending adjudication in PIL Writ Petition No.25 of 2014 filed in the Hon'ble High Court of Bombay at Goa in the case of Trevor Mascarenhas & Ors Vs State of Goa &Ors.

(4) The festival being conducted lawfully on the strength of Permissions/Licences/NOCs granted to Respondent No.8 and its local handling agents Respondent Nos. 9 and 10 by GCZMA, Deputy Collector and SDO, Mapusa, Bardez, Goa, Department of Tourism, GSPCB, Village Panchayat of Anjuna-Caisua, Department of Excise, Govt of Goa, Health Officer, Directorate of Health Services, Director of Fire & Emergency Services.

10. Respondent No.8 denied allegations regarding adverse impact on environment. The record reveals that after having considered rival submissions, exceptions taken to maintainability of the Application were rejected vide order dated 2nd March, 2016 and hearing proceeded on merits of the Application.

11. In the meanwhile, the Applicants filed rejoinder on 20th July, 2015. Besides denying contentions of the Respondent No.8, the Applicant accused Respondent No.8 of playing fraud and managing the Authorities with money and political power and obtaining permissions from the Authorities. Pertinently, there is no challenge to any of

those permissions, nor any particulars of fraud allegedly played on the Authorities are placed before us.

12. Before the parties were heard on merits of the case, opportunity was granted to file documents and to respond to the additional affidavit filed by the Applicants vide order dated 11th May, 2016 and 12th July, 2016.

13. Respondent No.8 filed its response to the additional affidavit dated 22nd April, 2016 of the Applicants. The Applicants filed additional affidavit dated 22nd April, 2016 in support of additional documents placed on record with list on 2nd May, 2016 vide order disposing off Misc. Application No.95/2016.

14. The Applicants highlighted the facts concerning : Dr. Joe D'Souza, Chairman of Anjuna-Caisua, Biodiversity Management Committee undertaking inspection of the site in question and destruction of biodiversity observed by him, the Chairman BMC AnjunaCaisua apprising Authorities- the Chief Secretary, Govt. of Goa, the Director of Tourism Department, the Chairman, GSPCB, the Member Secretary, GCZMA, the Collector, North, Panaji, Deputy Collector, Mapusa, Administrator, Comunidade, Mapusa, Sarpanch, Village Panchayat of Anjuna-Caisua, and the Revenue Department of Goa of the inspection conducted by Dr. Joe D'Souza, a Notice under Section 82

of the Goa Panchayat Raj Act, 1994 issued by Village Panchayat, Anjuna to one Mr. Nimitesh Malpekar in respect of temporary structure in Survey No.206/1, Vatagor, Bardez, Goa, the Show-cause Notice under Section 66 of the Goa Panchayat Raj Act to Mr. Nimitesh Malpekar in respect of temporary structure in Survey No.206/1, burning of grazing land, the orders passed by the Tribunal (Western Zone) Bench, Pune in Bartholomew D'Souza Vs State of Goa : Application No.24/2015, the Minutes of Meeting of GCZMA, resolution passed by Village Panchayat, complaints to Police regarding noise pollution and reports of GSPCB regarding noise levels.

15. Respondent No.8- rejoined additional affidavit on 2nd April, 2016 with the affidavit dated 11th July, 2016 and controverted the facts alleged by the Applicants. Respondent No.8 relied upon the Inspection Report of December, 2014 submitted by GSPCB, which has stated that there is no violation of the Noise Pollution (Regulation & Control) Rules, 2000 during 2014 event. Respondent No.8 invited our attention to the Minutes of Meeting of GSPCB held on 26.5.2015 Ex. 'I' annexed to the additional affidavit to point out that Dr. Nitin Sawant, Member Secretary of the Goa State Bio Diversity Board (GSBB) and Dr. Antonio Mascaren has, Expert Member, GCZMA had carried out surprise site inspection of 'Sun-burn Music

Festival' site at Vagator on 3.1.2015 and found that the said site falling outside Non Development Zone (NDZ) to be ideal and suitable for the parties organizing such music festivals and noticed only nominal damage with scattered plastic waste on the site. They have observed that the site at Vagator seems to be ideally suited for such purposes and this site can be designated as a permanent venue for exhibitions and festivals provided the owners/local residents agree and the inland hill slope is not tampered with. Respondent No.8 further invited our attention to the letter dated 12.1.2015 Ex. 'A' to the said affidavit showing removal of garbage generated during 'Sun-burn' music festival-2014 within reasonable time after conclusion of the event. Respondent No.8 questioned the observations made by Dr. Joe D'Souza and averred that Dr. Joe D'Souza did not ascribe the blame of alleged destruction of biodiversity in Survey No.206/1 to the Respondents as the Venue was used by various persons or entities including locals other than Respondents and had conducted such inspection behind its back. Respondent No.8 further points out that the Village Panchayat had withdrawn Show-cause Notice dated 18.12.2015 vide letter dated 26.12.2015 Ex. 'B' to the affidavit. Copies of the Permissions/NOCs/Approvals granted to the festival were

placed before us along with said affidavit vide Ex. 'C' and 'B' collectively to the affidavit.

16. In view of the aforesaid discussion, it is not the fit case for grant of permanent injunction restraining hosting celebrating, conducting any musical shows or events in the said property and for awarding the compensation as solicited by the applicant. However, it is necessary to have a check on hosting of any show or event in the said property lest if left unbridled it may cause damage to the environment.

17. We, therefore, reject the plea for grant of injunction and awarding of compensation, and pass the following directions :

1. Whenever any such events/festivals are organized, the organizers shall ensure that permission so granted to that effect is widely published and posted on the website at least 15 days in advance.
2. The organizers shall maintain all norms observance to w.r.t Noise pollution (Regulation Control) Rules 2000 and Solid Waste Management Rule 2016.
3. Goa Pollution Control Board, Goa Coastal Zone Management Authority, Department of Tourism and Local body/Municipalities shall maintain regular vigil

and undertake/perform functions as prescribed under their area of jurisdiction as per Law.

4. In case permission is granted for hosting of event or festival in the said area the licensee holding such permission shall strictly abide by all terms and conditions stipulated for grant of such permission and restore the area used back to its original position. Any default in this regard shall make the organizer of such event liable to pay environmental compensation.

5. Thus, the Original Application no. 122 of 2014 stands disposed off accordingly.

....., **JM**
(Justice U.D.Salvi)

....., **EM**
(Dr.Nagin Nanda)

Place: New Delhi- on VCF at PUNE.
DATE: 13th February, 2018.

NGT