

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

(By Video Conferencing)

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**Appeal No. 42/2022(WZ)**

**Caveat No. 09/2022**

**IN THE MATTER OF:**

- 1. Jose Fernandes**  
H. No. 23, Tamborim,  
Cavelossim, Salcete, Goa.
- 2. Maria Tereza Vivica Jenifer Colaco**  
W/O Edwin Raymond Neves Pereira,  
H No 2, Tamborim,  
Cavelossim, Salcete, Goa.

**.....Appellant(s)**

Versus

- 1. Goa Coastal Zone Management Authority**  
Through its Member Secretary,  
Department of Science, Technology,  
and Environment, Opp. Saligao Seminary,  
Saligao, Bardez, Goa – 403 511.
- 2. Bina Bedi**  
Rio. House No. 209, Golf Links,  
Lodi Road, New Delhi - 110 003.
- 3. Gurudeep Singh Bedi**  
Rio. House No. 209, Golf Links,  
Lodi Road, New Delhi - 110 003.
- 4. Deputy Collector-I, South Goa District,  
Judicial Branch**  
3<sup>rd</sup> Floor, Matahny Saldhana,  
Administrative Complex, Near KTC Bus Stand,  
Margao, Goa - 403 601.
- 5. Forest Department, Government of Goa**  
Through the Principal Chief Conservator of Forests,  
Forest Department, Government of Goa,  
Van Bhawan, Altinho, Panaji, Goa-403 001.
- 6. Ministry of Environment, Forests and  
Climate Change (MoEF&CC)**  
through the Joint Secretary, 2<sup>nd</sup> Floor,  
Agni Block, Indira Paryavaran Bhawan,  
Jorbagh Road, New Delhi —110 003.

**7. Village Panchayat of Cavelossim**  
Through the Sarpanch,  
Village Panchayat of Cavelossim,  
Cavelossim, Salcete, Goa - 403 731.

.....Respondent(s)

**Counsel for Appellant(s):**

Ms. Ronita Bhattacharya, Advocate

**Counsel for Respondent(s):**

Mr. Abhay Anturkar, Advocate along-with Mr. Dhruv Tank,  
Advocate for R-1/GCZMA  
Mr. Saket Mone along-with Mr. Abhishek Salian, Advocate  
and Ms. Anchita Nair, Advocate for R-2 & 3  
Mr. Rahul Garg, Advocate for R-6/MoEF&CC

**PRESENT:**

**Hon'ble Mr. Justice Dinesh Kumar Singh (Judicial Member)**  
**Hon'ble Dr. Vijay Kulkarni (Expert Member)**

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**Reserved on : 19.05.2023**  
**Pronounced on : 03.07.2023**

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**JUDGMENT**

1. This appeal has been preferred against the order dated 15.06.2022 issued by the Respondent No. 1/GCZMA, where-by the Respondent No. 1/GCZMA had discharged the proceedings against the Respondent No. 2/Bina Bedi and Respondent No. 3/Gurudeep Singh Bedi, which were initiated by the Appellants by filing a complaint to the effect that the Respondent Nos. 2 & 3 were carrying out illegal construction and illegal filling of eco-sensitive, low-lying khazan lands in Survey Nos. 147/18, 26, 28, 30, 32 & 34 of Cavelossim Village, Salcete Taluka.

2. The facts in brief of this appeal are that the Appellants, who are local villagers of Cavelossim Village, are concerned about destruction of the low-lying khazan lands and mangroves in the said village. The Respondent No. 1/GCZMA passed Order dated 15.06.2022 (impugned herein), where-by owners (Respondent Nos. 2 & 3) of the low-lying khazan lands in the said

Village were permitted to carry out illegal filling of and to continue construction upon the said eco-sensitive lands, which fall under CRZ-I area as per the CRZ Notification 2011.

3. The Appellants are aggrieved by the impugned order, where-by the Respondent Nos. 2 & 3 allowed to continue construction within khazan lands where mangroves have been felled illegally. The basis of the said direction is a site inspection report conducted on 23.03.2022 despite there being evidence on record to demonstrate that the said land falls squarely within khazan lands/mangroves forest/mangrove buffer zone/CRZ-I areas, which are required to be protected under the CRZ Notification 2011. Further, it is alleged that the Respondent No. 1/GCZMA has also failed to consider the fact that on 09.12.2019, a forest offence under the Goa Daman and Diu Preservation of Trees Act, 1984 was registered for illegal felling of 26 clumps of mangroves on the said land. The Appellants had made an application praying there-in for re-inspection of the site in question because earlier, inspection conducted grossly misleading because it ignored the draft CZMP. The ongoing construction needs to be stopped and the area needs to be restored.

4. The Respondent Nos. 2 & 3 had obtained permissions from the Town and Country Planning Department in December, 2021 to construct a residential structure on the land in question. After inspecting the site in question pursuant to a complaint, the Dy. Collector-I, South Goa District, Judicial Branch issued a Stop Work Order dated 08.12.2021 under Section 17(A) of the TCP Act. Subsequently, another Stop Work Order was issued on 20.01.2022 by the Respondent No. 1/GCZMA to Respondent Nos. 2 & 3 under Section 5 of the Environmental (Protection) Act, 1986 read-with Rule 4 of the Environmental (Protection) Rules, 1986. Thereafter, third Stop Work Order was issued on 08.02.2022 by Respondent No. 7/Village Panchayat of

Cavelossim to Respondent Nos. 2 & 3 under the Goa Panchayat Raj Act, 1994, which is still in force as the same has not been quashed. The Respondent No. 1 eventually discharged the proceedings by the impugned order.

5. It is further submitted that the site in question is fragile and eco-sensitive land where mangroves have been felled illegally, which is low-lying, saline water-logged area that is influenced by tidal water. The land in question was earlier covered with mangroves, which have been felled by Respondent Nos. 2 & 3 in order to raise construction and the same is still going on. These particular khazan lands are the main drainage of the flood waters from the Appellants' ward of Tamborim and if the illegal filling thereof is not removed, it will cause disastrous flooding. A mere 12 days after purchasing the said land on 27.11.2019, an inspection of the site in question was conducted on 09.12.2019 and Panchnama was prepared by the Forest Department, Government of Goa under Section 16 of the Goa Daman and Diu Reservation of Trees Act, 1984 regarding illegal felling of 26 mangrove clumps on the said land, particularly under Survey No. 147, where-in it is recorded that the said area is a water-logged as the water enters there from the nearby river during high tide. The report of Site Panchnama dated 09.12.2019 is annexed as Annexure A-1. Subsequently, while proceeding on the alleged demarcation of the land as settlement zone took place in the Regional Plan, 2021, the Respondent Nos. 2 & 3 obtained various permissions such as Conversion Sanad, Technical Clearance Order, Construction License and NOCs from various authorities such as the Town and Country Planning Department, the Collector of South Goa, the Primary Health Centre etc. and on the basis of these permissions, Respondent Nos. 2 & 3 commenced illegal filling of the said khazan/CRZ land.

6. It is further submitted that pursuant to the Meeting held on 24.02.2022, the Respondent No. 1/GCZMA decided to conduct a site inspection of the land in question and accordingly conducted the same without prior notice to the Appellants with numerous flaws and deficiencies. The Appellants received notice of intimation of the site inspection on 22.03.2022 at 1.40 P.M., pursuant to which they immediately visited the said land but found that none of the Respondent officials or other Respondents were present at the site. During the 305<sup>th</sup> Meeting of the Respondent No.1/GCZMA held on 20.05.2022, the Appellants were informed that the inspection had in fact been carried out on 23.03.2022 at 11 A.M., a copy of which is annexed as Annexure A-8. The said inspection report needs to be discarded because of the Appellants not being informed and the same was not conducted in their presence. The said inspection report states “as per draft CZMP 2011, Survey Nos. 147/26, 28, 30, 18 partly fall in khazan land” and it is further recorded that “During cross verification with the CZMP 2011, it was found that some portion of proposed building falls within the khazan land of sy.no 147/28 (Plan attached for reference)”. The Appellants were aggrieved because the demarcation of khazan lands and layout of construction superimposed on the survey plans annexed to the aforesaid Inspection Report were alleged to be based on the CZMP 2011. However, the copy of the CZMP 2011, which was relied upon, was not annexed thereto. It is further stated that the said report wrongly depicts that only part of the said land falls within the khazan lands, while the draft CZMP 2011 actually demarcates the entire land as khazan lands. The said Inspection Report failed to refer to the CZMP (draft), which was relied upon by the Appellants in their complaints/letters.

7. It is further mentioned that though the impugned order further records that a small portion of the subject lands falls within “khazan lands”

under the draft CZMP, but since filling was ongoing as a part of construction, at the time of issuance of the draft CZMP maps, it would not be hit by the CRZ Notification 2011. But it is mentioned that notwithstanding the contentions of the GCZMA, it is noteworthy that the GCZMA had noted that some portion of the said land fell within khazan lands and yet it failed to issue directions for the protection of that alleged "small portion" of khazan land. This shows grossly misuse its powers by the GCZMA authorities and fraudulent interpretation of the draft CZMP 2011 in order to help the Respondent Nos. 2 & 3.

8. It is further mentioned that in the Performance Audit Report, on Conservation of Coastal Eco-systems, prepared by the Comptroller and Auditor General of India, for the period between 2015-2020, it was observed that the State of Goa has still not demarcated khazan lands nor has it prepared management plans for the same as per requirement under the CRZ Notification 2011, which has led to the State of Goa granting permissions for prohibited activities on such lands/khazan lands.

9. It is further submitted that the Clause 8(V)(3) of the CRZ Notification 2011 states that khazan lands of Goa are ecologically sensitive areas and that the State is under an obligation to map the eco-sensitive low-lying areas, which are influenced by tidal action and also the State is required to prepare a management plan for khazan lands and to protect the mangroves along such khazan land. This section clearly prohibits developmental activities in such area. Hence the above-mentioned prayers have been made.

10. This appeal was first considered by us on 21.09.2022 and notices were directed to be issued to the Respondents.

11. Service affidavit has been filed, as per which the service of notice upon all the Respondents is found to be sufficient.

12. From the side of **Respondent No. 1/GCZMA**, reply affidavit dated 18.05.2023 has been filed, where-in it is submitted that pursuant to the complaint, the Answering Respondent issued a Show Cause Notice-cum-Stop Work Order dated 20.01.2022 to Respondent Nos. 2 & 3. The answering Respondent considered the aforesaid complaints during its Meeting dated 24.02.2022, where-in Respondent Nos. 2 & 3 submitted that the portion of the subject land utilized for the development/construction, which is said to be an area of 661 sq. mtrs., was not Khazan land. In order to ascertain the situation on the ground, the answering Respondent decided to conduct a site inspection of the land in question, which was conducted on 23.03.2022 and a report was submitted on 20.05.2022, where-in it was indicated that the subject land partly fell in Khazan land as per draft CZMP 2011. A small portion of building proposed to be constructed by Respondent Nos. 2 & 3 also fell within the Khazan land. Thereafter, this matter was considered in its Meeting held on 20.05.2022, where-in the Appellants claimed that the entire subject land was demarcated as a Khazan land by the NCSCM in CZMP 2011 and asserted that the Respondent Nos. 2 & 3 had filled low-lying Khazan lands and had also cut mangroves over the subject land. Thereafter, the matter was finally considered by the Respondent No. 1/GCZMA in its Meeting held on 02.06.2022. After hearing the parties and perusing the evidence on record, it was concluded that a small portion of the under-construction structure of Respondent Nos. 2 & 3 fell within the Khazan area of the draft CZMP, though it was observed that the Respondent Nos. 2 & 3 had obtained all requisite permissions in accordance with the laws prevailing at the relevant point of time and the construction work was carried out accordingly and the same was going on. The Respondents No. 2 & 3 did not deem it necessary to take permissions from the Respondent No. 1, as the said site was beyond 100 meters from the banks of Sal River. The

CZMP for Goa did not depict the land as “khazan” nor was there any record or notification declaring the said land to be “khazan”. There was no impediment in law to carry out the proposed development. Hence, the answering Respondent deemed it fit to dismiss the Appellants’ complaint and discharge the Show Cause Notice cum Stop Work Order issued to the Respondents No. 2 & 3.

13. It is further mentioned in this affidavit filed by the Respondent No. 1/GCZMA that this Tribunal had directed it vide order dated 22.03.2023 to file on record the final CZMP maps on the scale of 1:4000. However, it is submitted that the final CZMP maps notified by the Respondent No. 6/MoEF&CC is available on the scale of 1:25000 only.

14. From the side of **Respondent No. 2/Bina Bedi and Respondent No. 3/Gurudeep Singh Bedi**, reply affidavit dated 24.11.2022 has been filed, where-in it is submitted that the answering Respondents have carried out construction at the site in question after taking permissions from various authorities, details of which are as follows:-

*“7.1. On 22<sup>nd</sup> November 2019, the Collector south Goa after due investigation was pleased to grant conversion sanad with respect to a part of the Answering Respondents property being survey nos. 147/18, 26, 28, 30, 32 and 34 of Village Cavelossim, Salcete Taluka - Goa under the provisions of the Goa Land Revenue Code 1968. As per conversion sanad, land admeasuring 660 sq. mtrs. which is owned by the Answering Respondents is converted for residential purpose. The Answering Respondents are developing their personal bungalow on the said 660 sq mtrs. Hereto annexed and marked as Exhibit-A is a copy of the conversion sanad dated 22<sup>nd</sup> November 2019, issued by the Collector of South Goa.*

*7.2. On 27<sup>th</sup> November 2019, the Answering Respondents purchased an area of about 3075 sq. mtrs. which included Survey Nos. 147/18, 26, 28 and 30 of Village C Answering*



*Respondents, Salcete Taluka - Goa. Therefore, an area of 660 sq.mtrs. bearing Survey Nos. 147/18, 26, 28 and 30 out of the larger land admeasuring 3075 sq.mtrs is developable as per the conversion order dated 22<sup>nd</sup> November 2019 and as per the extant law ("said land"). The Answering Respondents proposed to develop a residential bungalow for their personal use on the said land ("said project"). Hereto annexed and marked as Exhibit-B is a copy of form-1 and Form-15 of the said land which shows the Answering Respondents to be the owners of the said land.*

*7.3 On 21<sup>st</sup> August, 2020 the Town and Country Planning Department after duly considering the said project from technical point of view and its feasibility as per prevailing law was pleased to grant Technical Clearance with respect to the said project. Hereto marked and annexed as Exhibit- C is a copy of the Technical Clearance dated 2e August 2020 with respect to the said project.*

*7.4. On 9<sup>th</sup> February 2021, the Village Panchayat after due deliberation and discussions and after duly considering the technical clearance was pleased to grant construction license to the Answering Respondents for developing the said project. Hereto annexed and marked as Exhibit-D is a copy of the construction license dated 9th February 2021, issued by Village Panchayat with respect to the said project.*

*7.5. On 10<sup>th</sup> June 2021, the Answering Respondents obtained technical clearance order with respect to the revised structure of the said project. Hereto annexed and marked as Exhibit-E is a copy of the order dated 10th June, 2021, with respect to the said project.*

*7.6. On 6<sup>th</sup> August, 2021, the Primary Health Centre, Chinchinim after taking site inspection of the said land came to the conclusion that the said land is appropriate for construction of a septic tank and that there would not be any issue from the sanitation point of view. Accordingly, the Primary Health Centre, granted NOC for the construction of the septic tank. Hereto annexed and marked as Exhibit-F is a copy of the NOC issued by Primary Health Centre, Chinchinim dated 6<sup>th</sup> August, 2021.*

7.7. On 14<sup>th</sup> September 2021, the Village Panchayat of Cavelossim, after due deliberation and discussion and considering the Technical clearance was pleased to grant construction license to the Answering Respondents with respect to the said project. Hereto annexed and marked as Exhibit-G is a copy of the Construction License dated 14<sup>th</sup> September, 2021.

7.8. After obtaining all the permissions from the authorities, the Answering Respondents commenced the construction of the said project as per the extant law, as on date, substantial construction is duly completed with respect to the said project. Hereto annexed and marked as Exhibit-H are copies of photographs showing the current status of construction of the said project.

7.9. In furtherance of developing the said project, the Answering Respondents have invested an amount of Rs. 68,78,849/-.”

15. Respondent Nos. 2 & 3 have further said that it is well settled that the draft CZMP is not applicable, until and unless it is notified. The planning authority is under obligation to grant all permissions as per the prevailing CZMP and cannot withhold the permissions on the ground of a draft CZMP. The CZMP after being notified is not applicable retrospectively and will not affect any construction for which permission had already been granted prior to CZMP being notified. In the instant case, admittedly, the development permission for the said project was granted prior to the CZMP 2011 (6<sup>th</sup> September 2022) being notified and was granted as per CZMP 1991. Admittedly, as per CZMP 1991, the said land is developable and does not fall under Khazan land. Therefore, the Answering Respondents have commenced the construction and in fact have completed substantial part of it in furtherance of permissions obtained with regard to the said project prior to CZMP 2011 being notified. Therefore, the Respondent No. 1/GCZMA has rightly discharged the show cause notice.

16. On the basis of above pleadings, we have to decide as to whether the survey numbers in question i.e. 147/18, 26, 28, 30, 32 & 34 of Cavelossim

Village, Salcete Taluka are Khazan lands? if yes, whether any construction/ developmental work can be permitted in the said lands in the light of the CRZ Notification 2011?

17. We have heard the arguments of the learned Counsel for the parties and perused the record.

18. From the side Appellants, it is argued by the learned Counsel that in the impugned order dated 15.06.2022 at page no. 58 of the paper book, it is clearly mentioned that a small portion of the under-construction residential structure falls within the “khazan” area depicted on the draft CZMP but looking to the fact that the Respondent Nos. 2 & 3 had taken all requisite permissions in accordance with law prevailing at the said time and thereafter only commenced their construction, it was found inappropriate to go by the depiction given in draft CZMP showing small portion of the land in question to be falling in khazan and accordingly, the compliant made by the Appellants was discharged. It is argued that it is absolutely wrong approach of the Respondent No. 1/GCZMA because when they had themselves conducted the site inspection on 20.05.2022, report of which is annexed at page nos. 99 to 101 of the paper book, it was found that the Survey Nos. 147/26, 28, 30 & 18 partly falls in khazan land and on cross verification with the CZMP 2011, it was found that some portion of proposed building fell within the khazan land of Survey No. 147/28. The learned Counsel for the Appellants has drawn our attention to Clause (5) Sub-Clause (vi) of CRZ Notification- 2011, where-in it is recorded that -

*“The coastal States and Union Territory will prepare within a period of twenty four months from the date of issue this notification, draft CZMPs in 1:25,000 scale map identifying and classifying the CRZ areas within the respective territories in accordance with the guidelines given in Annexure-I of the notification, which involve public consultation;”*

19. Our attention is also drawn by the learned Counsel for the Appellants to Sub-Clause (xii) of the same clause, which is as follows:-

*“The Coastal Zone Management Plans as already approved by the Ministry of Environment and Forests shall be valid up to the 31st July, 2018 or till such time as the approval is given by that Ministry to the fresh Coastal Zone Management Plans made under the said notification, whichever is earlier.”*

20. Based on the above, it is vehemently argued by the learned Counsel for the Appellants that within 24 months, the GCZMA was required to prepare CZMP map at scale 1:25,000. Despite the fact that the GCZMA did not prepare the same within that time limit, merely because CZMP map is not prepared, it cannot be the position of law that any violation of the environmental law (here the violation in the terms of construction on the khazan land) by any person may be allowed.

21. The learned Counsel for the Appellants has also drawn our attention to Clause (3) CRZ of Goa, relevant portion of which is as follows:-

“ (i).....  
(ii) .....  
(iii).....  
(iv) *the eco sensitive low lying areas which are influenced by tidal action known as khazan lands shall be mapped;*  
(v) *the mangroves along such as khazan land shall be protected and a management plan for the khazan land prepared and no developmental activities shall be permitted in the khazan land;*  
(vi) .....  
(vii) .....  
(viii) .....”

22. Based on above, it is argued vociferously by the learned Counsel for the Appellants that it is fault on the part of the GCZMA not to map eco-sensitive low-lying areas, which are influenced by tidal action i.e. khazan land and also mangroves as stated above. It is further argued by her that despite the fact that the said area, where the Respondent Nos. 2 & 3 have raised construction of a house, was found during the inspection made by

the GCZMA authorities itself, to be partly in khazan land, no action was taken to stop the construction work, which shows their collusion and this act has been done on their part under the garb that the khazan land was not finally notified and till that time, there was only draft CZMP and not final CZMP. This kind of plea should not be allowed to be taken by the Respondent No. 1/GCZMA.

23. It is also hammered by the learned Counsel for the Appellants that Section 20 of National Green Tribunal Act, 2010 lays down that “the Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle”. In the case in hand, it is very much needed that the precautionary principle should be invoked and in case that is done, it is quite natural that the GCZMA ought to have taken all possible steps at their end to stop the Respondent Nos. 2 & 3 from raising construction over any part of the land, which was found to fall in khazan land. There is no doubt, according to GCZMA, that as per the affidavit which has been filed and the same has been cited above, they have found a part of the land in question to be khazan where the construction has been done but it has been overlooked at their end by saying that the final CZMP was not notified and that the said area was shown to fall in khazan only in draft CZMP.

24. The learned Counsel for the Respondent No. 1/GCZMA has drawn our attention to Section 46 of the MRTP Act, where-in it recorded as follows:-

*“The Planning Authority in considering application for permission shall have due regard to the provisions of any draft or final plan or proposal published by means of notice submitted for sanction under this Act”.*

25. Besides that provision, the learned Counsel for the Respondent No. 1/GCZMA has also drawn our attention to Clause (5) Sub-Clause (x) of the CRZ Notification 2011, which is as follows:-

*“All developmental activities listed in this notification shall be regulated by the State Government, Union Territory Administration, the local authority or the concerned CZMA within the framework of such approved CZMPs as the case may be in accordance with provisions of this notification”*

26. Based on above, it is argued by the learned Counsel for the Respondent No. 1/GCZMA that the above provision of CRZ Notification 2011 very distinctly says that approved CZMP has to be relied upon and not the draft CZMP.

27. We are not in agreement with the argument of the learned Counsel for the Respondent No. 1/GCZMA in this regard because they should have also followed precautionary principle. After site inspection, when GCZMA was in know of the fact that some portion of the construction made by the Respondent Nos. 2 & 3 was to fall in khazan land, they should have immediately taken all possible steps to stop the same but they did not do so for the reasons best known to them. It is all important to mention here that in their own inspection report dated 20.05.2022, it was found that at that point of time only soiling (seems it means land filling) and PCC work for footing was completed and rest of the construction was yet to be done but they did not take precaution to stop further construction.

28. From the side of Respondent Nos. 2 & 3, learned Counsel has placed reliance upon *Goan Real Estate and Construction Ltd. & Anr. vs. Union of India through Secretary, Ministry of Environment and Ors.* [(2010) 5 SCC 388], where-in it is held that

*“On the facts and in the circumstances of the case, it is held that the judgment dated 18.04.1996 rendered in Indian Council for Enviro-Legal Action case, [(1996) 5 SCC 281] declaring part of the amending Notification dated 16.8.1994 to be illegal, will not affect the completed or the ongoing constructions undertaken pursuant to the plans sanctioned under the amending Notification of 1994 till two clauses of the same were set aside by the Supreme Court.”*

29. The other Judgment, which has been relied upon by the learned Counsel for the Respondent Nos. 2 & 3, is *Sai Baba Sales Pvt. Ltd. vs. Union of India & Others* [(2021) SCC OnLine SC 1133], where-in following paras have been relied upon:-

*“20. In situations of this nature, the Doctrine of Legitimate Expectation is attracted. The principle of the rule of law as explained in De Smith’s Judicial Review, such as, Regularity, Predictability and Certainty in Government’s dealings with the Public, must operate in the present matter. The Project Proponent can legitimately expect a certain degree of stability in the manner in which environmental regime is set and how the applications are processed. The actions of the authorities are expected to adhere to the prevalent norms only, without the element of uncertainty for the executed project.*

*22. This Court in Sethi Auto Service Station vs Delhi Development Authority & Ors<sup>3</sup>, speaking through Justice D.K. Jain, has cited other opinions and elucidated on the concept of legitimate expectation, in the following manner,*

*“24. The House of Lords in Council of Civil Service Unions & Ors. Vs. Minister for the Civil Service, a locus classicus on the subject, wherein for the first time an attempt was made to give a comprehensive definition to the principle of legitimate expectation. **Enunciating the basic principles relating to legitimate expectation, Lord Diplock observed that for a legitimate expectation to arise, the decision of the administrative authority must affect such person either***

*(a) \*\*\*\* \*\**

*(b) **by depriving him of some benefit or advantage which either: (i) he has in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do until some rational ground for withdrawing it has been communicated to him and he has been given an opportunity to comment thereon** or (ii) he has received assurance from the decision-maker that they will not be withdrawn without first giving him an opportunity of advancing reasons for contending that they should be withdrawn.”*

*25. A Project Proponent is not expected to anticipate the changes in EC regimes, especially as a result of judicial interventions, and keep revisiting the sanctioned clearances by the competent authority or even raze down validly constructed structures. Neither can it be expected to knock the doors of an authority, not empowered at the relevant time, to process its applications. Such a scenario would render the process akin to a Sisyphean task, eternally inconclusive and never ending.*

*26. As seen, the NGT in the impugned judgment has protected the completed construction and, on this aspect, we deem it appropriate*

*to endorse the same, by accepting the submission of the appellant's Counsel and the learned ASG. The four constructed buildings are resultantly to be treated to be under a valid EC with all legal consequences. It is, however, made clear that if any further construction is proposed by the appellant with the sanctioned layout, the same should not be done on the strength of the EC granted on 28.11.2017 by the PCMC. In other words, if the Project Proponent wishes to construct the remaining buildings, they must secure fresh clearance from the competent authority, as per the currently applicable framework. It is ordered accordingly."*

30. Based on the above, it is argued by the learned Counsel for the Appellants that since the construction, which has been done by the Respondent Nos. 2 & 3, was as per the then existing law i.e. CZMP prepared under the CRZ Notification 1991 where there was no provision for demarcation of khazan land, therefore, no construction was prohibited from being done in khazan land, they should not be governed by subsequently brought law i.e. CZMP maps prepared under the CRZ Notification 2011, which were approved by the MoEF&CC in September, 2022.

31. We are not convinced with this argument because the facts in the Judgment relied upon by the learned Counsel for the Respondent Nos. 2 & 3 are different from the facts in the present case and moreover the matters of environmental laws precautionary principle has to be followed, therefore, even if there was no khazan land identified, the precautionary principle ought to have been followed by the Respondent No. 1/GCZMA, which has not been done in this case.

32. In view of the above facts, we are of the view that the impugned order deserves to be set aside and this appeal deserves to be allowed. We accordingly set aside the impugned order with the direction that Respondent No. 1/GCZMA shall hear to decide the matter afresh after giving opportunity of hearing to both the sides and shall determine the area which according to their own admission is found to be lying in khazan land, the same be



ascertained and an appropriate order be passed in regard to that, within a period of two months from the date of uploading of the Judgment/Order.

33. With the above directions, we dispose of this appeal.

34. All pending applications, if any, also stand disposed of.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

July 03, 2023  
Appeal No. 42/2022(WZ)  
Caveat No. 09/2022  
P.Kr.