Item No. 02 (Pune Bench)

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(Through Video Conferencing)

Appeal No. 25/2020 (WZ)

Victor Fernandes Appellant(s)

Versus

Goa Coastal Zone Management Authority Respondent(s)

Date of hearing: 19.10.2020

CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER

For Applicant(s) : Mrs. Asha A. Desai, Advocate for Applicant

For Respondent(s): Mrs. Fawia M. Mesquita, Advocate for R-1 (GCZMA)

ORDER

1. A three Member Committee comprising of the Deputy Conservator of Wild Life, Goa, Member Secretary, Goa State Pollution Control Board and Member Secretary, Goa Coastal Zone Management Authority submitted a report with regard to the unauthorised construction and the GCZMA vide its resolution dated 11.02.2020 passed an order for demolition of the structure which was found to be unauthorised and to pay a penalty of Rs. 1 lakhs. Aggrieved by the order the present appeal has been filed with the prayer to quash and set-aside the order dated 11.02.2020.

2. The facts as narrated in the appeal reveals that the appellant is running the hotel in the name and style M/s Rai Resort, for several years in Ashvem Mandrem Goa. The structures as alleged are in existence prior to the notification. In the case of Goa Paryavaran Savarkshan

Samittee Vs. State of Goa Application No. 23/2014 (WZ), it was directed by the Tribunal to take action against all such temporary structures or shacks or any other structure found erected after 19.02.1991 in NDZ area along the beaches of Morjem, Mandre, Galgibag and Agonda without specific permission from GCZMA in accordance with law. On an Execution Application a report was called for and the aforesaid Committee submitted the report on the basis of which demolition order against structure which were found to be within the NDZ Zone were reported by the Committee.

3. First Ground taken by the learned Counsel for the Appellant is that when the authority passed the order to penalise the Appellant, no demolition order should be passed. It is argued on behalf of the learned counsel appearing on behalf of the Respondent that the Appellant was found guilty for constructing unauthorised structure in the NDZ zone and for the aforesaid act, a penalty was imposed according to law. The penalty itself reveals that there was unauthorised construction and the version of the Appellant that demolition order cannot be passed is not tenable. Learned Counsel for the Respondent – GCZMA had submitted that the amount of penalty has not been deposited till date and in reply thereof learned counsel for the appellant had submitted that the amount of penalty has been deposited in the office. It is further argued that in the second show cause notice there was no mention of demolition of the structure and on the basis of this it is argued that the order of demolition is not tenable and void *ab initio*. In reply thereof, it has been argued by the GCZMA that original cause of action was unauthorised structure or construction without the permission of Competent Authority and in violation of the CRZ Notification and the structure being constructed in NDZ Zone thus the penalty relates to the unauthorised construction and the authority is competent to pass an order with demolition and

realisation of penalty. It is further argued that matter has already been agitated upto the Hon'ble High Court and no relief has been granted by the Hon'ble High Court against the unauthorised construction. Learned Counsel for the respondent had submitted that the forum of the Tribunal or the Court has been made to delay the proceeding and appellant or the persons who have raised the illegal structures on the NDZ Zone has first adopted the forum of the Hon'ble High Court and then again file the appeal or application only to delay the proceedings. It is further argued by the appellant that all these 16 sunbeds which were found by Committee were not of the appellant. The opinion is based on the 3 Member Committee and after examination by the GCZMA thus we do not intervene in the matter since the report and observation of the GCZMA is that those 16 sunbeds belongs to the appellant and the Committee has correctly identified it and reported to the GCZMA and GCZMA in compliance thereof under the authority passed an order to penalise the defaulter/polluter. It is further argued by the respondent that the appellant has not taken permission to put up 16 sunbeds and by putting these structures caused environmental damage. It is to be noted that in the case of Goa Paryavaran Savarkshan Samittee Vs. State of Goa Application No. 23/2014 (WZ), this Tribunal had directed for demolition of all structures in violation of CRZ notification in the site as mentioned above and after report and examination and inspection it was found that the structures were illegal, unauthorised and without permission and thus according to the report the Goa Coastal Zone Management Authority has proceeded.

3. It is argued that the order issued by the respondent no. 1 is without jurisdiction and without application of the mind and thus is not to be complied with. It is to be noted that even if the order as stated by the appellant is without application of the mind but it was contested for

more than two times before the Hon'ble High Court and it was passed by a competent authority having jurisdiction to decide it, the appellant is bound to follow the orders especially the directions issued by the Hon'ble High Court.

4. In a case reported in 2011 (3) SCC 364, Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group, it was held as follows:

> *"16. It is a settled legal proposition that even if an order is void, it requires to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void. In State of Kerala v. M.K. Kunhikannan Nambiar Man jeri Manikoth Naduvil, (1996) 1 SCC 435, Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd., (1997) 3 SCC 443, M. Meenakshi v. Metadin Agarwal and Sneh Gupta v. Devi Sarup, (2009) 6 SCC 194, this court held that whether an order is valid or void, cannot be determined by the parties. For setting aside such an order, even if void, the party has to approach the appropriate forum.*
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> *17. In State of Punjab V. Gurdev Singh this court held that a party aggrieved by the in validity of an order has to approach the court for relief of declaration that the order against him is inoperative and therefore, not binding upon him. While deciding the said case, this Court placed reliance upon the judgment in Smith v. East Elloe RDC, wherein Lord Radchiffe observed: (AC pp. 769-70).*
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> > *"...An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity (on) its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."*
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> *18. In Sultan Sadik v. Sanjay Raj Subba, (2004) 2 SCC 1377, this court took a view observing that once an order is declared non est by the court only then the judgment of nullity would operate erga omnes i.e. for and against everyone concerned. Such a declaration is permissible if the court comes to the conclusion that the author of the order lacks inherent jurisdiction/competence and therefore, it comes to the conclusion that the order suffers from patent and latent invalidity.*
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> *19. Thus, from the above it emerges that even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person."*

5. Hon'ble the Apex Court in 2004 (3) SCC 445, Piedade Filomena Gonsalves vs. State of Goa And Ors. dated 11th March, 2004 held as follows:

> *"6. The Coastal Regulation Zone Notifications have been issued in the interest of protecting environment and ecology in the coastal area. Construction raised in violation of such regulations cannot be lightly condoned. We do not think that the appellant is entitled to any relief. No fault can be found with the view taken by the High Court in its impugned judgment."*

6. Hon'ble the Supreme Court in 2016 (10) SCC 705, Anil Hoble Vs. Sashinath Sethi held as follows:

> *"10. We find that when the appellant purchased the subject plot vide registered sale deed dated 3-8-1992, only a small structure at the corner of the said plot was in existence and was used as a garage and which was indisputably within 100 m from the high tide line. On this finding, it necessarily follows, that the structure as it exists now is quite different — both in shape, size and location being in the middle of the plot. Obviously, it is an unauthorised structure constructed after 19- 2-1991. The CRZ Policy dated 19-2-1991 prohibits any construction up to 200 m from the high tide line. It is to be treated as "No Development Zone", except for repairs of existing "authorised structures" not exceeding specific permissible FSI, plinth area and other norms for permissible activities including facilities essential for such activity under the Notification.*
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> *11. The relevant clause in the said Notification, dealing with land area falling within CRZ (III) area reads thus:*
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> *"... CRZ-III*
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> *(i) The area up to 200 m from the high tide line is to be earmarked as "No Development Zone". No construction shall be permitted within this zone except for repairs of existing authorised structure not exceeding existing FSI, existing plinth area and existing density, and for permissible activities under the Notification including facilities essential for such certificates. An authority designated by the State Government/Union Territory Administration may permit construction of facilities for water supply, drainage and sewerage for requirements of local inhabitants. However, the following used (sic users) may be permissible in this zone: agriculture, horticulture, gardens, pasmres, parks, play fields, forestry and salt manufacturing from sea water.*
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> *(ii) Development of vacant plots between 200 and 500 m of high tide line in designated areas of CRZ (III) with prior approval of Ministry of Environment and Forests (MoEF) permitted for construction of hotels/beach resorts for temporary occupation of tourists/visitors subject to the conditions as stipulated in guidelines at Annexure II.*
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> *(iii) Construction/Reconstruction of dwelling units between 200 and 500 m of the high tide line permitted so long it is within the ambit of traditional rights and customary uses such as existing fishing villages*

and gaothans. Building permission for such construction/reconstruction will be subject to the conditions that the total number of dwelling units shall not be more than twice the number of existing units; total covered area on all floors shall not exceed 33 per cent of the plot size; the overall height of construction shall not exceed 9 m and construction shall not be more than 2 floors—ground floor plus one floor. Construction is allowed for permissible activities under the Notification including facilities essential for such activities. An authority designated by State Government/Union Territory Administration may permit construction of public rain shelters, community toilets, water supply, drainage, sewerage, roads and bridges. The said authority may also permit construction of schools and dispensaries, for local inhabitants of the area, for those panchayats the major part of which falls within CRZ if no other area is available for construction of such facilities. (iv) Reconstruction/Alterations of an existing authorised building permitted subject to (i) to (iii) above."

14. The fact remains that the structure directed to be demolished by the Tribunal, was obviously erected after 19-2- 1991. That being an unauthorised structure within the meaning of sub-clause (i) quoted above, could not be used for any purpose whatsoever and was required to be demolished. Therefore, the finding recorded by the Tribunal and the consequential directions given in that behalf are unassailable.

15. In this view of the matter, it is not necessary for us to dilate on the argument as to whether the CRZ Policy prohibits change of user of the structure which was in existence on 19- 2-1991, so as to be used as a restaurant and bar. In our opinion, on the facts of the present case, no substantial question of law much less of great public importance arises for our consideration. 16. Hence, this appeal must fail and the same is, therefore, dismissed with no order as to costs."

7. In Kerala State Coastal Zone Management Authority Vs. State of Kerala 2019 (7) SCC 248, it was held:

"The area in which the respondents have carried out construction activities is part of the tidally influenced water body and the construction activities in those areas are strictly restricted under the provisions of the CRZ notifications. Uncontrolled construction activities in these areas would have devastating effects on the natural water flow that may ultimately result in severe natural calamities. The expert opinions suggest that the devastating floods faced by Uttarakhand in recent years and Tamil Nadu this year are the immediate result of uncontrolled construction activities on river shores and unscrupulous trespass into the natural path of backwaters. The Coastal Zone Management Plan (CZMP) has been prepared to check these types of activities and construction activities of all types in the notified areas. The High Court has ignored the significance of approved CZMP.

As per the appellant, these construction activities are taking place in critically vulnerable coastal areas which are notified as CRZ-III. The Panchayats have issued these permissions in violation of relevant statutory provisions and CRZ notifications. The Vigilance Section of Local SelfGovernment Department, Government of Kerala detected

these violations and anomalies in the issue of building permits and hence directed the bodies concerned to revoke all the flawed building permits exercising its powers under Rules 16 and 23 of the Kerala Municipality Building Rules, 1999 (the 1999 Rules).

It is necessary for the local authority to follow the restrictions imposed by the notification, as amended from time to time. Thus, it was not open to the local authority i.e. Panchayat, in view of the notification of 1991 to grant any kind of permission without the concurrence of Kerala State Coastal Zone Management Authority. Admittedly, Panchayat has not forwarded any such applications for building permissions and there is no concurrence or permission granted by the Kerala State Coastal Zone Management Authority. As such, once a due inquiry has been held by the Committee, there is no escape from the conclusion that the area fell within CRZ-III, it was wholly impermissible and unauthorised construction within the prohibited area. Judicial notice is taken of recent devastation in Kerala which had taken place due to heavy rains compounded by such unbridled construction activities resulting in colossal loss of human life and property due to such unauthorised activity."

12. It is also relevant to take note of Rule 23(4) of the 1999 Rules which is extracted below:

> *"23. (4) Any land development or redevelopment or building construction or reconstruction in any area notified by the Government of India as a coastal regulation zone under the Environment (Protection) Act, 1986 (29 of 1986) and rules made thereunder shall be subject to the restrictions contained in the said notification as amended from time to time."*

14. The Court in Vaamika Island (Green Lagoon Resort) v. Union of India , has observed: (SCC pp. 767-68, paras 26-28)

> *"26. The petitioner had effected the construction in violation of the provisions of 1991 and 2011 Notifications as well as Map No. 32-A, so found by the High Court. The factual details of the same and where actually the portion of some of the properties of the petitioner in Vettila Thuruthu will fall, has been elaborately dealt with by the High Court in its judgment in paras 109 to 119. We notice that the High Court has dealt with the issue pointing out that so far as buildings which have been constructed by the petitioner during the currency of the Notification issued in 1991 are concerned, they are clearly in violation of this notification hence, action has to be taken for the removal of the same. The Director of Panchayat also vide letters dated 7-3-1995, 17-7-1996 directed all the Panchayats to strictly follow the provisions of CRZ notification which it was found not followed by granting permission. The High Court has also found on facts that reconstruction work appeared to have been done during the currency of the 2011 Notification and two buildings (193/D and 193/E) were also constructed illegally. The High Court has also noticed another new construction underway. These all are factual findings which call for no interference by this Court. The High Court has clearly noticed that reconstruction work has been done*

contrary to the 1991 as well as 2011 Notifications and the report of the Expert Committee constituted by the Kerala State Council for Science, Technology and Environment (KSCSTE) was accepted.

27. We are of the considered view that the above direction was issued by the High Court taking into consideration the larger public interest and to save Vembanad Lake which is an ecologically sensitive area, so proclaimed nationally and internationally. Vembanad Lake is presently undergoing severe environmental degradation due to increased human intervention and, as already indicated, recognising the socio-economic importance of this waterbody, it has recently been scheduled under "vulnerable wetlands to be protected" and declared as CVCA. We are of the view that the directions given by the High Court are perfectly in order in the abovementioned perspective.

28. Further, the directions given by the High Court in directing demolition of illegal construction effected during the currency of the 1991 and 2011 CRZ notifications are perfectly in tune with the decision of this Court in Piedade Filomena Gonsalves v. State of Goa, wherein this Court has held that such notifications have been issued in the interest of protecting environment and ecology in the coastal area and the construction raised in violation of such regulations cannot be lightly condoned.

> *"108. We do not think that this Court should be detained by such an argument. The Notification issued under the Environment (Protection) Act is meant to protect the environment and bring about sustainable development. It is the law of the land. It is meant to be obeyed and enforced. As held by the Apex Court, construction in violation of the Coastal Regulation Zone Regulations are not to be viewed lightly and he who breaches its terms does so at his own peril. The fait accompli of constructions being made which are in the teeth of the Notification cannot present, but a highly vulnerable argument."*

17. We find that the view taken by the Kerala High Court in the aforesaid decision is appropriate. 18. In the instant case, permission granted by the Panchayat was illegal and void. No such development activity could have taken place in prohibited zone. In view of the findings of the Enquiry Committee, let all the structures be removed forthwith within a period of one month from today and compliance be reported to this Court."

8. Goa is fortunate to have some of the beaches which are preferred by the sea turtles particularly Olive Ridley turtles for laying their eggs, therefore, every effort is required to be made by the concerned authorities to keep such beaches undisturbed and in pristine condition. There should not be any structures, whether temporary or permanent, to be

erected in such beaches and no artificial lighting or the food articles or litters to be allowed to be thrown in these beaches. Artificial lights disturb turtles since they are extremely sensitive as they are guided by natural light and moon lights. And there should not be any litter on the beaches which would attract unwanted predators. There should not be any interference during hatching process and a distance should be maintained, and if disturbed the turtles withdraw from nesting. We, therefore, direct that the sheds, sunbeds etc., which are there in these beaches are removed before the turtle nesting season begins. The authorities may also keep these areas fenced to keep the beaches pristine and undisturbed during turtle nesting season which starts in November – December and continuous upto March-April.

9. According to the discussion made as above, we do not find any substance and merit in the present appeal. Accordingly, appeal deserves to be dismissed and accordingly dismissed with costs of Rs. 50,000/- which would be paid to CPCB within 15 days. The GCZMA is directed to proceed and ensure the compliance to the order and guidelines mentioned above withregard to the turtle feeding.

Sheo Kumar Singh, JM

Dr. Satyawan Singh Garbyal, EM

October 19th, 2020
Appeal No. 25/2020 (WZ)
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