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IN THE HIGH COURT OF BOMBAY AT GOA

PUBLIC INTEREST LITIGATION WRIT PETITION NO.44 OF 2022

Mr Reuben Franco
resident of Umtawaddo, Age 61,
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Annul Income – Rs.3,00,000/-.

... Petitioner

Versus

1. Director of Tourism,
Government of Goa, having
office at Paryatan Bhavan,
Patto, Panaji-Goa.

2. The Goa Coastal Zone
Management Authority
Through its Member
Secretary, 1st floor, Pt.
Deendayal Upadhyay Bhavan,
Behind Pundalik Devasthan,
Porvorim-Goa 403521.

3. Village Panchayat
Calangute
Through its Secretary,
Calangute, Bardez-go.

4. State of Goa,
Through its Chief Secretary,
Porvorim, Bardez Goa.

5. Goa State Pollution

Control Board,
Through Member Secretary
Nr. Pilerne Industrial Estate,
Opp. Saligao Seminary,
Saligao, Goa 403511.

6. Department of Water
Resources
Through Executive Engineer
Sinchai Bhavan, near Police
Station, Porvorim, Goa 403
517.

7. Shack Owners Welfare
Society Goa,
a Society registered under the
Societies Registration Act,
1860 having office at House
No.914, Camotim, Candolim,
Bardez, Goa through its
President, Mr Cruz Victorino
Cardozo, aged 52 years,
residing at House No.320A,
Tibet, Cavellosim, Salcete,
Goa.

... Respondents

**Mr Rohit Bras De Sa, Amicus Curiae with Advocate Mr
Prataprao Naik.**

**Mr D. Pangam, Advocate General with Mr Prashil Arolkar
and Ms Sulekha Kamat, Additional Government Advocates
*for the Respondent – State.***

**Mr Pavithran A.V. with Mr Prasad Kholkar, Advocate *for
Respondent No.5.***

**Mr Y.V. Nadkarni with Mr Sanket Kamat, Advocate *for the
Intervenor.***

**CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ.**

DATE : 26th JUNE 2023

JUDGMENT : (*Per M.S. SONAK, J.*)

1. Heard Mr Rohit Bras De Sa, learned Amicus Curiae, Mr D. Pangam, learned Advocate General who appeared along with Mr P. Arolkar and Ms Sulekha Kamat, learned Additional Government Advocates for the State, Mr Y.V. Nadkarni with Mr Sanket Kamat for the Shack Owners Welfare Society of Goa, Mr Pavithran A.V. with Mr Prasad Kholkar for the Goa State Pollution Control Board (GSPCB).

2. Rule. The rule is made returnable immediately with the consent of and at the request of the learned Counsel for the parties. Learned Counsel for the respondents waived service.

3. This Public Interest Litigation was instituted seeking the following reliefs regarding the Calangute-Candolim beach stretch (the said stretch):-

- (a) To remove the bore wells sunk on the said stretch;
- (b) To remove the septic tanks, soak pits and garbage pits on the said stretch;
- (c) To comply with directions issued and undertakings furnished in PILWP No.40/2018 concerning decongestion and placing of beach chairs and deck beds on the said stretch;

(d) To restrict the number of beach shacks at the main entry points as undertaken by the Director of Tourism in the affidavit filed in PILWP No.40/2018;

(e) To survey the said stretch to identify numerous violations by beach shacks and ensure that the said stretch is clean and decongested;

(f) For directions to the Tourism Department to enforce terms and conditions of the shack policy as reflected in the permissions granted to erect and operate shacks on the said stretch.

4. After several orders were made in this petition, on 02.05.2023, Mr P. Navti, the learned Counsel for the petitioner, stated that the petitioner had requested him and his Senior, Mr Rohit Bras De Sa, to withdraw their appearances. Mr Navti also stated that the petitioner was contemplating withdrawal of this petition.

5. Due to the directions issued in this petition from time to time, several beach shacks operating without any consent to operate from the GSPCB or otherwise in breach of the terms of conditions subject to which permissions were granted had to stop operations. Therefore, we suspected that some pressure was exerted upon the petitioner from some affected quarters to require his advocates to withdraw their appearance and, if possible, to abandon or withdraw this Public Interest Litigation.

6. Accordingly, by our order dated 02.05.2023, we permitted Mr Navti and Mr Rohit Bras De Sa to withdraw their appearances on

behalf of the petitioner. Still, we requested Mr Rohit Bras De Sa to appear in this matter as Amicus Curiae and assist the Court in the disposal of this Public Interest Litigation. The petitioner was also directed to remain present in the Court on the next date to clarify his position. However, the petitioner neither chose to remain present nor sent any request for withdrawal of the petition.

7. In a Public Interest Litigation, the petitioner cannot, as a matter of right, insist upon withdrawing such a petition. If such a motion is made, the Court may replace the petitioner or pursue the petition as a *Suo Motu* Public Interest Litigation, mainly if the cause espoused involves public interest. Accordingly, we are grateful to Mr Rohit Bras De Sa, who, at our request, assisted this Court as an Amicus Curiae.

8. Since one of the issues in this petition concerned beach shacks on the said stretch, we welcomed the intervention of the Shack Owners Welfare Society of Goa, which espouses the cause of shack owners. Their Counsel, Mr Y.V. Nadkarni and Mr Sanket Kamat were accordingly heard. Similarly, we are quite grateful for the assistance rendered by the learned Advocate General for the State of Goa by not treating this matter as some adversarial litigation. Mr Pavithran, the learned Counsel for the GSPCB, also assisted the Court in resolving the issues raised in this petition. Accordingly, with the consent of the learned Counsel, we dispose of this Public Interest Litigation in the following terms.

BORE WELLS ON THE BEACH STRETCH AND GROUNDWATER EXTRACTION:

9. The petitioner alleged that several shack owners or operators have sunk bore wells on the beach stretch and were actively extracting groundwater through such wells. This groundwater was used without any fetters for the shack operations.

10. The beach shacks on the said stretch are erected and operated in an Eco-Sensitive Zone that can be temporarily used only for some limited purposes. There is a prohibition under the CRZ Notification 2011 for sinking bore wells in the said stretch or extracting groundwater. Therefore, alarmed by the allegations, we required the State Authorities to undertake an immediate survey to ascertain the veracity or otherwise of such allegations.

11. On 08.02.2023, the Tourism Department filed a preliminary report dated 07.02.2023. This report disclosed that almost 23 bore wells were sunk, installed and operated on the Candolim Beach stretch. Most of these bore wells were around the shacks permitted by the Tourism Department, and such shacks were utilising the water from such bore wells to operate their shacks.

12. On instructions, Ms Kamat, the learned Additional Government Advocate, stated that such bore wells were not permitted in terms of the shack policy. She confirmed that no permissions were granted to such bore wells under the Goa Ground Water Regulation

Act, 2002, and the Rules framed thereunder in 2003. She agreed that these bore wells were wholly illegal and unauthorised.

13. Accordingly, by our order dated 08.02.2023, we directed the concerned respondents to immediately seal such bore wells and take necessary steps to ensure that the same were not operational. A compliance report was directed to be filed on 14.02.2023 without offering any excuses. The police authorities were directed to render full cooperation. The concerned respondents were directed to place photographs of the sealed bore wells along with the compliance report.

14. Despite our directions, no further report was filed on the sinking of bore wells in the Calangute-Candolim beach stretch. However, based on the compliance report, the Court was assured that such bore wells had been de-operationalised and steps would be taken to dismantle them to prevent further use. Accordingly, if this exercise still needs to be completed, we direct the concerned authorities to ensure that not only the bore wells referred to in the preliminary report dated 07.02.2023 but all bore wells on the said beach stretch are de-operationalised, dismantled or removed.

15. The authorities, i.e. Respondents 1 to 6, are directed, and they must ensure that no bore wells are sunk on not only the Calangute-Candolim beach stretch but on all the beach stretches in the entire State of Goa because such activity is not legally permitted given the legal and scientific literature on the subject. Groundwater extraction from eco-sensitive beach stretches has the potential to cause irreparable

damage to the water table structure, mainly due to the effects of seawater intrusion into the sweet water aquifers. The position is already alarming. If unauthorised water extraction continues, the position will be disastrous. Fortunately, in Goa, there is legislation dealing with groundwater extraction. But unfortunately, implementation is lacking.

16. The issues concerning the sinking of bore wells and groundwater extraction are governed by the Goa Ground Water Regulation Act, 2002 (Ground Water Act). This Act was enacted to regulate and control the development of groundwater resources and matters connected therewith.

17. Section 2(d) of the Ground Water Act defines “groundwater” to mean the water under the surface of the earth regardless of the geological structure in which it is stationary or moving and includes all groundwater reservoirs. Section 2(g) defines the expression “sink” with all its grammatical variations and cognate expressions in relation to a well shall include any digging, drilling or boring of a well or deepening carried out to the existing wells.

18. Section 2(i) defines the expression “user of groundwater” means the person or persons or an institution including a company or an establishment, whether Government or not, who or which own or use or draw ground water for any purpose, including domestic, industrial, environmental, ecological and agricultural use, made either on a personal, institutional or community basis.

19. Section 4 of the Ground Water Act is concerned with the Declaration of Scheduled, Water Scarcity and over-exploited areas. Sub-section (1) of Section 4 provides that having regard to the potential of availability of groundwater and other relevant factors, the Government, in consultation with a Ground Water Cell constituted under Section 3, may declare, by notification, any area in the State as a Scheduled area.

20. By Notification dated 05.11.2007, the following Village Panchayat areas in the coastal zone have been declared as scheduled areas with immediate effect:

SCHEDULE – I

Sl.No.	Taluka/Block	Village Panchayat areas in coastal zone
1.	Pernem	Queri-Tiracol, Harmal, Mandrem, Morjim.
2.	Bardez	Anjuna-Caisua, Arpora-Nagoa, Calangute, Candolim, Nerul, Reis-Magos.
3.	Tiswadi	St. Lawrence, Agassim, Taleigao, Curca-Bambolim, Goa Velha (St. Andre), Siridao- Paliem.
4.	Marmagao	Chicalim, Chicolna, Velsao-Pale, Cansaulim-Arrosim, Majorda-Utorda, Calata.
5.	Salcete	Colva, Betalbatim, Canca-Benaulim, Carmona, Cavelossim, Seraulim, Orlim, Varca.
6.	Quepem	Naqueri-Betul.
7.	Canacona	Cola, Agonda, Nagarsem, Loliem-Polem, Poiguinim.

21. Section 5 of the Ground Water Act provides registration of existing wells and permission to sink new wells in a scheduled area. Sub-section 3 of Section 5 provides that no person shall sink a well in

a scheduled area unless he has obtained permission in this behalf from the Ground Water Officer. Any person desirous of sinking a well shall apply, in the prescribed form and manner, to the Ground Water Officer for grant of permission and shall not proceed with any activity connected with sinking of the well unless permission is granted to him by the Ground Water Officer.

22. Section 13 of the Ground Water Act provides that the Ground Water Officer or any person authorised by him in writing in this behalf shall have the power to seize and keep custody of any equipment/device utilised for illegal sinking and close the work executed, partly or fully; to require any user of groundwater, who does not comply with the provisions of Ground Water Act and the rules framed thereunder, to close down any water supply or destroy any hydraulic work found to be illegal according to the provisions of Ground Water Act and the rules framed thereunder. It provided that where the user of groundwater does not comply with the requisition issued to him within thirty days, the Ground Water Officer may himself carry out the necessary work and recover the cost from the illegal user as arrears of land revenue.

23. Section 13(1)(i) of the Ground Water Act empowers the Ground Water Officer or any person authorised by him in that behalf to enter and search with assistance, if any, as he considers necessary, any place in which the Ground Water Officer has reason to believe that offence under this Act has been or is being committed and order in writing the person who has been or is committing the offence not

to extract or use the groundwater for a specified period. Further, Section 13(1)(m) empowers the Ground Water Officer or any person authorised by him to close the use of toilet/septic tank/soak pit if it is found that it is polluting the well.

24. Section 13(2) provides that the power conferred by this section includes the power to break open the door of any premise where sinking, extraction and use of groundwater may be going on. The provisions of the Code of Criminal Procedure, 1973, shall so far as may be, apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under section 93 of the said Code.

25. Section 14 of the Ground Water Act empowers the Ground Ground Water Officer to close wells and seize materials and equipment. Sub-section (1) of Section 14 provides that on a complaint made or otherwise, about any contravention of any of the provisions of this Act, the Ground Water Officer may, by an order in writing, call upon the owner or the person in possession of the well to stop the extraction of water and any other contravention forthwith. Sub-section (2) provides that where the owner or person in possession of the well fails to comply with the order given under sub-section (1), the Ground Water Officer or an Officer duly authorised by him, may enter upon the land, remove obstructions, if any, close the pumping of water, disconnect the power supply, seize any material or equipment used with such extraction of water and take such action as may be required, and may close or seal the well. Sub-section (3) provides that

the closure of a well shall be made and a list of all materials and equipments seized shall be prepared in the manner prescribed. Sub-section (4) provides that where the Ground Water Officer or an Officer authorised by him has closed or sealed the well under sub-section (2), the cost incurred thereof shall be recovered from such owner or person as arrears of land revenue.

26. Section 17(B) of the Ground Water Act provides that for illegal sinking/construction and/or use of wells and/or transportation of water and/or polluting and contaminating ground water:

If any user—

(a) contravenes or fails to comply with any of the provisions of this Act or any rule made thereunder;

(b) obstructs the Ground Water Officer or any other person authorised by him to exercise the powers under this Act, he shall be punishable—

(i) for the first offence, with fine which may extend to rupees five thousand;

(ii) for the second and subsequent offence, with imprisonment for a term which may extend to six months and/or with fine which may extend upto rupees ten thousand, every time.

27. Section 23 of the Ground Water Act provides protective measures for public drinking water sources and existing groundwater structures in non-scheduled areas. Since, in this petition, we are

concerned mainly with the scheduled areas, detailed reference to this provision may not be necessary.

28. Section 24 of the Ground Water Act provides that the offences under this Act shall be cognisable within the meaning of the Code of Criminal Procedure, 1973. Section 25 provides that the provisions of the Ground Water Act, and the orders issued or made under the Act shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

29. Thus, the provisions of the Ground Water Act provide that no person can sink a well in a scheduled area unless he has obtained permission in this behalf from the Ground Water Officer. Considering the provisions of the CRZ notification, there is no question of the Ground Water Officer granting such permissions in eco-sensitive beach areas. All the twenty-three wells sunk in the Candolim stretch were without permission from the Ground Water Officer. To our query as to why the Ground Water Officers had taken no action against the rampant and unauthorised sinking of bore wells in coastal stretches and the unauthorised extraction of groundwater therefrom, Ms Kamat, the learned Additional Government Advocate, had candidly submitted on 08.02.2023 that the authorities under the Ground Water Act carried an impression that they are powerless to act against the illegal and unauthorised sinking of bore wells and the illegal and unauthorised extraction of groundwater unless there is a specific complaint filed before them. In our order dated 08.02.2023, we deprecated such an attitude. We had pointed out that such an

impression was the product of misreading the provisions of the Ground Water Act and a convenient device to shirk discharging the duties the law cast upon the Ground Water Officer.

30. Section 14 of the Ground Water Act provides that the Ground Water Officer may “*on a complaint made or otherwise*”, call upon the owner or a person in possession of the well to stop water extraction and any other contravention. Other provisions not only empower but cast a duty upon Ground Water Officer to take steps to prevent the illegal sinking of wells, bore wells, etc. There are provisions which empower the Ground Water Officer to take steps to close and dismantle unauthorisedly sinking bore wells, etc. These are provisions that do not simply empower. These provisions confer a power and a duty to exercise such power when the situation so demands.

31. The Ground Water Officers cannot avoid discharging their duties based on their misimpression about being powerless to act unless they receive written complaints. Nature and Environment do not lodge written complaints. But the fury of their revenge can be catastrophic. Therefore, the Ground Water Officers are expected to be vigilant and prevent illegal and unauthorised sinking of wells. Where wells have been unauthorisedly or illegally sunk, the Ground Water Officer must take steps to close down the same and launch prosecution against those responsible. The Ground Water Officers must understand that they protect valuable public resources; therefore, they must take all necessary measures to protect these resources. The protection cannot be conditioned upon the Ground Water Officer

receiving written complaints about the contravention of the provisions of the Ground Water Act.

32. The ground Water Officers are now directed to conduct a detailed survey of the coastal stretches in the entire State of Goa, particularly the coastal stretches of the Village Panchayats listed in Schedule I of the Notification dated 05.11.2007 referred above. Such exercise should start by 01.10.2023 and conclude by 31.12.2023. This is when shacks are put up on the coastal beaches, and unauthorised bore wells are sunk to facilitate unauthorised groundwater extraction for the shack operations. During such surveys, suppose the Ground Water Officers find any illegally sunk bore wells or illegal groundwater extraction, in that case, Ground Water Officers must take immediate action to stop the same by resorting to the provisions of the Ground Water Act. If there is any obstruction, the police authorities must cooperate fully with the Ground Water Officers to implement the Ground Water Act. The Ground Water Officers must launch prosecutions against the violators, and such prosecutions must be taken to their logical conclusion. The groundwater officers must undertake repeated surveys and ensure that there is no contravention of the provisions of the Ground Water Act. The officers must maintain a logbook or contemporaneous record of such survey.

33. Most coastal stretches in the State of Goa are regulated by the Coastal Regulation Zone Notification, 2011 and 2019. Clause 3(xi) of CRZ Notification, 2011 provides for the drawl of groundwater and

construction related thereto prohibited within 200 mts to HTL, except in the following cases:-

(a) In the areas which are inhabited by the local communities and only for their use.

(b) In the area between 200mts-500mts zone the drawl of groundwater shall be permitted only when done manually through ordinary wells for drinking, horticulture, agriculture and fisheries and where no other source of water is available.

Note:-Restrictions for such drawl may be imposed by the Authority designated by the State Government and Union Territory Administration in the areas affected by sea water intrusion.

34. Paragraph 4 of the CRZ Notification, 2019 provides that the activities listed at (i) to (xi) shall be prohibited, in general, within the entire CRZ and exceptions to these and other permissible and regulated activities viz. CRZ I, II, III and IV shall be governed by the provisions of paragraph 5. The activity prohibited at clause (xi) is “drawl of ground water”. In CRZ II, some reconstruction activities are permitted but it shall be the responsibility of the concerned Town Planning Authority to ensure that the Solid Wastes are handled as per respective Solid Waste Management Rules and no untreated sewage is discharged on to the coast or coastal waters (paragraph 5.2)

35. Paragraph 5.3 of CRZ Notification 2019 concerns activities permitted in CRZ III. Here again, temporary tourism facilities like shacks are permitted. Still, the sinking of unauthorised bore wells,

drawing of groundwater and construction related thereto is prohibited within 200 meters of HTL except for the use of local communities in areas inhabited by them and in the areas between 200 to 500 meters of the HTL, groundwater withdrawal may be permitted only through manual means from ordinary wells for drinking, horticulture, agriculture and fisheries, etc. where no other source of water is available and restrictions for such drawl may be imposed by the designated Authority by State Government or Union territory Administration in the areas affected by seawater intrusion. Thus, even the CRZ Notification 2019 prohibits the drawl of groundwater from CRZ areas. Though temporary tourism facilities like shacks, toilets, and washrooms may be permitted in some CRZ areas, there is no scope for unauthorised sinking bore wells or extracting groundwater from such areas.

36. A 2007 research paper, “*Modelling of Seawater Intrusion in Coastal Area of North Goa*” by C.P. Kumar et al., [National Institute of Hydrology, Roorkee (Uttarakhand)], highlights the issue of over-exploitation of groundwater in coastal stretches of North Goa and how freshwater resources in these coastal stretches are likely to experience disastrous and irrevocable impacts due to sea level rise and intrusion of seawater into the sweet water aquifers. This paper refers to the National Water Policy, 2002, which stresses that over-exploitation of groundwater should be avoided, especially near the coast to prevent ingress of seawater into sweet water aquifers. This paper acknowledges that the soils in Goa are predominantly lateritic. However, the coastal areas are alluvial soils composed of loamy mixed sand and loamy

sands. Around 30 km² area close to the coast (15 km along the coast and 2 km wide) is more prone to seawater intrusion. The paper presents the results of field and laboratory studies. It concludes that up to 2007, seawater intrusion was confined only up to 300 m from the coast under normal rainfall conditions and present draft pattern. However, seawater intrusion may further advance inland if withdrawals of groundwater by builders, hotels and other tourist establishments continue to increase in the coming years. Therefore, corrective measures with proper planning and management of groundwater resources in the area must be initiated at this stage so that it may not become a major water quality problem in the coming times.

37. Dr A.G. Chachadi, Department of Geology, Goa University, in his research paper “*Strategies for Water Resources Management in the Coastal Zones of Goa*”, published in 2000, refers to coastal aquifer freshwater resources likely to experience disastrous and irreversible impacts in the time to come due to over-exploitation and sea level rises. He warns that the groundwater withdrawals in excess of safe yields and reduced recharge to the ground due to rapidly changing land use patterns along the coasts have increased the incidences of seawater intrusion into the coastal aquifers. Heavy dependence on groundwater supply and reduced recharge to the ground due to land use pattern shift has caused imbalances in the seawater freshwater. Particularly during summer, the groundwater gets contaminated with salt water by intruding inland.

38. The above research paper flags another critical fact about groundwater concerns, i.e., domestic waste disposal. The entire coastal belt has no central sewage system, and each household has its own septic tank and cesspool. These structures are built in a sandy formation which is highly permeable. During the rainy season, the water table gets close to the ground surface, submerging the septic systems and other waste sites. This eventually leads to washing off the contaminants into the groundwater regime.

39. Professor Dr Ashoka G. Dessai, a researcher who specialised in petrology and ore geology and has long experience teaching at Savitribai Phule Pune University and Goa University in his book *“Geology and Environment of Goa – Issues and Concerns”*, writes that the quality of the State groundwater except for the coastal belt where it has been adversely affected due to increased anthropogenic activity can be classified as good. The hotels, restaurants and public eateries in this heavily populated area lack adequate drainage facilities. As such, the wastewater, sewage and garbage are buried, preferably in pits, without pretreatment. This is more common in south Goa, where seasonal shacks and tourist huts bury human excreta into the ground. The permeable nature of the soil and the shallow water table conditions have facilitated the movement of pollutants in the subsoil zones contaminating the coastal aquifers with augmented levels of COD, BOD, phosphates, nitrates, sulphates, microbial pathogens (faecal coliform), among others, consequential to the sewage and decomposition of the organic waste. In some of the villages from North Goa, for instance, in the case of Calangute, the groundwaters

contain coliform ranging from 2,000 to 20,000 MPN/1, the permissible limits being 100 MPN/1. Likewise, nitrate and phosphate concentrations are also more than the permissible limits. These waters are utilised for all purposes except for drinking.

40. In the above book, Professor Dr Ashoka G Dessai also writes that with augmented groundwater development in coastal areas primarily due to tourism activity, the resource is under extreme stress and subjected to saltwater intrusion. The saltwater intrusion has been noticed in bore wells from several talukas, e.g. Pernem, Bardez from North Goa and Mormugao, Salcete and Canacona, South Goa. Several dug and bore-well-waters in and around Keri, Parascondem in Pernem taluka, Tivim, Colvale (Karaswada), Anjuna, Baga, Reis Magos and the stretch in the vicinity of Chapora and Baga river (Bardez taluka) is brackish due to the ingress of saline water in the freshwater aquifer. Sampling some of the wells from Baga has established the ingress of saline waters. Brackish to saline waters are also encountered in wells around Mormugao, those along the banks of river Sal (beyond the areas of normal tidal influence), at Velim, Varca and Sao José de Areal (Salcete taluka) and some wells at Palolem (Canacona taluka) in South Goa. The high salinity levels are encountered during the dry season, particularly in May, when freshwater flow is minimal. Consequently, the ingress of saline water is more. The groundwaters in the coastal areas are subjected to overexploitation. As such, shallow aquifers, in particular, are vulnerable to degradation; the situation is undoubtedly of concern regarding the quantum utilisation and the degradation of the water quality.

41. In *Perumatty Grama Panchayat V/s. State of Kerala & Ors.*¹, the learned Single Judge of the Kerala High Court in the context of excessive exploitation of ground water invoked the public trust doctrine and concluded that the under ground water belongs to the public. The State and its instrumentalities should act as trustees of this great wealth. The State has got a duty to protect ground water against excessive exploitation and the inaction of the State in this regard will tantamount to infringement of the right to life of the people guaranteed under Article 21 of the Constitution of India. The learned Single Judge referred to some decisions of the Hon'ble Supreme Court wherein it has been repeatedly held that right to clean air and unpolluted water forms part of the right to life under Article 21 of the Constitution. So, even in the absence of any law governing ground water, the Court ordered that the Panchayat and the State are bound to protect ground water from excessive exploitation.

42. In the *State of Karnataka V/s. State of T.N. & Ors.*² (Cauvery Water Dispute), the Hon'ble Supreme Court referred to the Tribunal's award in which the Tribunal took note of the fact that development of ground water had taken place mostly in the private sector where the owners have many a time over-exploited the available groundwater resources resulting in gradual lowering of the water level with the hazard of intrusion of sea water in the coastal areas thereby polluting the quality of groundwater in the vicinity of the coastline and, thus,

¹ 2003 SCC OnLine Ker 500

² (2018) 4 SCC 1

rendering the groundwater in the affected area not only unfit for human consumption but also for use in agriculture.

43. Thus, based on legal and scientific literature, we direct respondents 1 to 6 to ensure that no bore wells are sunk on any coastal stretches in the entire State of Goa. The authorities under the Ground Water Act must continually monitor these stretches and ensure that no bore wells or any other wells are sunk on the beach stretch in the entire State of Goa. Immediate action must be taken to seal and eventually dismantle and de-operationalise such bore wells, given the legal regime and the disastrous effects on sweet water aquifers and intrusion of saline waters in the water tables. If any violations are detected, prosecutions must be launched against the violators, and such prosecutions must be taken to their logical conclusion.

44. In most cases, no prosecution is launched. In some cases, prosecution is launched, but the violation, i.e., groundwater extraction, can continue until the prosecution continues. This needs to be corrected. At least hereafter, the Authorities under the Ground Water Act must be vigilant and take proactive steps to ensure no unauthorised sinking of wells/bore wells and unauthorised groundwater extraction. The same applies to the Authorities under the CRZ Notifications, who must also adopt proactive measures to ensure violations of groundwater extraction from the eco-sensitive zone are controlled.

SEPTIC TANKS, SOAK PITS AND GARBAGE PITS :

45. The State of Goa has formulated a Tourism Shack Policy, 2019-22, to regulate the erection of temporary, seasonal structures, beach shacks, deck beds, umbrellas and other structures on the beaches in the State of Goa. By Notification dated 22.09.2022, this policy was extended for the tourist season 2022-23. This policy contains the terms and conditions for the erection of temporary, seasonal structures, beach shacks, deck beds, umbrellas, huts and other structures for the period between 1st September to 31st May on identified beach stretches.

46. In the context of septic tanks, soak pits, and garbage pits clauses 28, 30 to 37 are important and the same read as follows:

“28. The beach shack allottee shall not discharge dirty water, liquid, sewage from the toilets, wash basin or cleaning area, garbage or any dry waste on the beach, or into the sand.

30. The beach shack allottee will be required to segregate the garbage and dispose off the same as per the Provisions of Goa Solid Waste Management Rules. The shack allottee shall maintain dust bins for biodegradable waste with a lid and for non-biodegradable waste. The dustbin size shall be minimum of 50 litres with separate lids in black (dry waste), green (wet waste) and blue (plastic) to be bought and kept in designated areas.

31. Each allottee will also maintain a container to collect the waste water generated from washing, wash basin of sufficient capacity of 2000 ltrs. and more etc.

and arrange to dispose the same once a day collectively by all allottees in the area through the concerned Village Panchayat/Municipality for which necessary fees shall be paid by the beach shack allottee.

32. The Department shall levy penalties for disposing off garbage unlawfully and even cancellation of permission for (a) not maintaining dustbins (b) not disposing off waste water properly (d) illegal dumping/burying of garbage in the vicinity or any portion/place of beach stretch, as enumerated in clause No. 23.

33. Compulsory installation of portable toilets-with the objective of enforcing eco-friendly shacks and preventing damage to the environment, every beach shack allottee shall compulsorily provide portable toilet facility, like bio-digestive toilet, chemical mobile toilet with inbuilt proper sewage collection and disposal facility. The toilet waste shall not be let out on beach area. The officials of the Tourism Department, Pollution Control Board and C.R.Z. shall verify if this criteria is adopted by the shack allottee and only then issue the license. Toilets/lavatories without portable attached collection and disposal units will not be permitted under any circumstances. The service provider for such portable toilets has to be approved by the Goa State Pollution Control Board.

34. No septic tanks, soak pits or open draining of toilet waste in the ground shall be permitted at any cost. Penalty for installing any soak pit, open draining of sewage and toilet waste in to the sand on the beach shall lead to cancellation of the permission and further may also lead to debarring the shack allottee for further period.

35. The shack allottee will have to pay a sum of Rs. 10,000/- per season to the Department of Tourism

towards and garbage collection/disposal by the agency appointed by the Department.

36. The Toilet should be managed in a clean and hygienic manner at all times. In case of violation of these conditions, the shack license will be revoked and security deposit shall be forfeited without notice.

37. Area surrounding the beach shack must be kept clean by the beach shack allottee. Burning or burying of waste/garbage in any form is not allowed. In case, any dirt/garbage, fire wood, charcoal, etc. is found behind the beach shack or nearby, the license of the beach shack shall be liable for cancellation forthwith and the beach shack shall be demolished at the risk and cost of the beach shack allottee. The beach shack allottee shall take the responsibility to see that no garbage is dumped/buried in the bushes/vegetations or dunes. The beach shack owner shall hand over segregated wet and dry garbage to the Beach cleaning contractor appointed by the Department and maintain a proper log book with daily entries.”

47. The learned Advocate General produced before us a provisional licence dated 27.05.2022 granted to one of the shack allottees. He submitted that provisional licences are issued to all shack allottees in the very same format. A perusal of the provisional licence shows that the above-quoted terms and conditions of the shack policy are substantially incorporated in the provisional licence issued to the shack allottees. Clauses 3,8,9 & 10 are relevant in this regard. They are transcribed below for the convenience of reference:

"3) The shack allottee shall compulsorily install Bio-degradable/Bio-Chemical toilets with annual maintenance contract backup with an authorized

service provider. The Bio-degradable/Bio-Chemical toilets so installed should be compulsorily above the ground and further should be approved by Goa State Pollution Control Board. The toilet shall be managed in clean and hygienic manner at all times.

8) The beach shack allottee shall be required to segregate the garbage and dispose off the same as per the provision of Goa Solid Waste Management Rules, 2016. The shack allottee shall maintain dust bins with lids for biodegradable and for non-biodegradable waste. The dust bin size shall be minimum of 50 ltrs with separate lids in black (dry waste), green (wet waste) and blue (plastic) to be kept in designated areas.

9) The shack allottee shall not discharge either dirty water, liquid, sewage from the toilets, wash basin or cleaning area and garbage or any dry waste on the beach or into the sand or in sea/river water.

10) Burning or burying of waste or any other material on the beach or in and around the shack is prohibited. Violation shall lead to cancellation of license forthwith.”

48. In terms of the CRZ Notification and the provisions of the Goa Public Health Act, septic tanks, soak pits or garbage pits are prohibited on the beach stretches. Further, there are specific prohibitions in the shack policy and the shack allotments issued to the allottees based upon which such shacks are put up on the beaches. Yet, the inspection revealed no proper chemical or biodegradable toilets at the shacks. Besides, septic tanks, soak pits and garbage pits surrounded the beach shacks in several cases. Respondents 1 to 6 are therefore directed to take emergent steps to prevent such septic tanks, soak or garbage pits

on the beaches. Suppose such septic tanks, soak pits and garbage pits still exist on the beaches, Respondents 1 to 6 must take immediate steps to ensure that the same are removed, dismantled and de-operationalised.

49. The Officials under the Goa Public Health Act and from the Goa State Pollution Control Board must undertake regular surveys and inspections on the Goa coastal stretches. If any septic tanks, soak pits or garbage pits are found on the beaches, they must take immediate action to remove and de-operationalise the same. The violators must be strictly dealt with, including by launching prosecutions under the legislation governing such matters.

50. The permissions issued by the Tourism Department are only “provisional” in the first instance. Based upon such permissions, the shack allottees must install a biodegradable/biochemical toilet with an annual maintenance contract backup with an authorised service provider. The biodegradable/biochemical toilets should be compulsorily above the ground and approved by the Goa State Pollution Control Board. Based on the provisional licence, a shack allottee cannot commence shack operations. Based on the provisional licences, the shack allottees can only erect a shack compliant with the terms and conditions in the shack policy and the provisional licences.

51. After the biodegradable/biochemical toilets are provided with the due approval from the GSPCB, the Tourism Department Officials must inspect the shack/toilet, satisfy themselves with the compliances

of all terms and conditions and only after that issue the final licences based upon which the shack allottees can commence operations at the shack.

52. If, at the inspection stage, the Tourism Department officials find any septic tanks, soak pits or garbage pits, there is no question of issuing a final licence or allowing such a shack to operate. Instead, immediate directions must be issued to remove the septic tanks, soak pits and garbage pits. A show cause notice must also be issued to such shack allottees to show cause as to why the allotment should not be cancelled for breach of terms and conditions. This procedure must be strictly complied with by the Tourism Department from the year 2023 onwards.

NON-COMPLIANCE WITH DIRECTIONS IN PILWP NO.40/2018 CONCERNING DECONGESTION AND PLACING OF BEACH CHAIRS/DECK BEDS ON BEACH STRETCHES:

53. PILWP No.40/2018 was disposed of by order dated 05.03.2019. By this PIL, the petitioner had urged the respondents to take immediate steps to decongest certain popular and crowded beaches in the State of Goa. The petitioner had pointed out that a considerable portion of these beaches was used for setting up shacks and deck beds, leaving considerably less space for tourists and locals visiting such beaches.

54. The order dated 05.03.2019 records that during the pendency of the petition, the State took several steps towards decongestion. The learned Advocate General also assured the Court that such steps would be continued to be taken as it is in the interest of the State that beaches are decongested to the extent possible so that both tourists and locals can visit the beaches. The order dated 05.03.2019 refers to the detailed affidavit filed by Sanjay Gadekar, Director of Tourism, State of Goa, dealing with the issues raised in the PIL. In paragraph 5 of our order dated 05.03.2019, paragraphs 4 to 9 of this affidavit were transcribed. In paragraph 6, the Court accepted the statements made by the Director of Tourism as statements made to the Court. Directions were issued to the respondents to implement their statements and take the proposed measures as indicated in their affidavit dated 05.03.2019. Based on this, the petition was disposed of.

55. Paragraphs 5 & 6 of our order dated 05.03.2019 in PILWP No.40/2018 are transcribed below for the convenience of reference:

“5. Shri Sanjay Gadekar, Director of Tourism, State of Goa has now filed an detailed affidavit in this matter. Paragraphs 4 to 9 of the affidavit are extremely relevant to the issues raised in the present petition and, therefore, same are transpired below for convenience of reference:-

“4. I say that the Calangute beach stretch encompasses the following entry points throughout the whole stretch as mentioned herein;

- a. Sauntavaddo entry point*
- b. Khobravaddo entry point*

- c. Umtavaddo entry point*
- d. Maddovaddo entry point*
- e. Tivaivaddo entry point*
- f. Gauravaddo entry point*

5. I say that this Respondent has already placed on record before this Hon'ble Court the Inspection report dated 01/03/2019, wherein demolition/confiscation drive was undertaken from the main entrance of the Calangute beach stretch and during the said drive illegally placed deck-beds/Umbrellas/Table/chairs and other illegally placed materials were demolished/confiscated by this Respondent.

Annexed and marked hereto as Exhibit A Colly is the copy of the inspection report dated 01/03/2019.

6. I say that this Respondent has constituted a flying squad headed by the Asst. Director (Revenue) which has been carrying out surprise inspection/confiscation drives and the same will be undertaken in future as well at least once a week at the Calangute beach stretches. I state that the same exercise will be undertaken by this Respondent at the entry points of the Calangute beach stretch as well.

7. I say that in addition to the aforementioned this Respondent has also issued a letter dated 21/02/2019 bearing No.7/2(684)/DT/2019/637 to the Sarpanch as well as the Secretary of the Village Panchayat of Calangute through which the Village Panchayat has been directed to maintain a strict vigil and ensure stringent action is taken against Private restaurants/Shack owners who are found to have been placing deck beds, tables, chairs etc., which are blocking the free movement of tourist/individuals. I state that the action taken by the Village Panchayat will be in addition to the action undertaken by this Respondent.

Annexed and marked hereto as Exhibit B is the copy

of the Letter dated 21/02/2019.

8. I say that this Respondent has also appointed Tourist Wardens/Supervisors on the Calangute Beach stretch to maintain a strict vigil on the beach stretch. I say that besides the aforementioned staff, the Indian Reserve Battalion (IRB) has also deployed police subinspectors/constables on the beach stretch to ensure that any action being taken, by this Respondent, against any offending individual is ensured to be undertaken smoothly without any hassles. I say that in addition to the aforesaid this Respondent has also appointed Information Assistant as well as a Lower Division Clerk to check and monitor the beach stretch.

9. I say that the aforementioned staff maintain a stringent vigil to ensure that the free movement of the tourist/individuals visiting the beach stretch is maintained. I say that in case of any violations being noticed by the aforementioned staff the said staff would immediately inform this Respondent, and this Respondent would thereafter confiscate/take necessary action with regards the same.”

6. We accept the statements made by the Director of Tourism, State of Goa as statements to this Court. We accordingly, direct the respondents to implement their own statements as also take measures proposed by them in aforesaid affidavit dated 5.3.2019.”

56. Now the petitioner complains that the statements made in the affidavit dated 05.03.2019 and the directions issued by this Court disposing of PILWP No.40/2018 are not being complied with. The Director of Tourism contests this position and states that there is due compliance. For the present, we accept the Director of Tourism's

statement. In any case, we reiterate that the State, including the Director of Tourism, will have to comply with the statements/undertakings in their affidavit dated 05.03.2019 and our directions in the order dated 05.03.2019 disposing of PILWP No.40/2018. We direct accordingly.

57. Further, if similar overcrowding problems exist on other beaches in the State of Goa, the Director of Tourism and Village Panchayats must adopt similar steps to ensure decongestion. Thus, we clarify that the directions issued in PILWP No.40/2018 should not be taken as restricted only to the Calangute and Candolim beaches, but they shall apply to all the beaches in the State of Goa so that tourists and locals can visit and enjoy such beaches, without the entire beach space or a substantial portion of the beach space being occupied by shacks, beach chairs, deck beds, etc. Suitable steps must be taken by the Director of Tourism and the concerned Village Panchayats to ensure that such directions concerning decongestion, etc., are adopted and implemented on all the beaches in Goa.

TO RESTRICT THE NUMBER OF BEACH SHACKS AT THE MAIN ENTRY POINTS AS UNDERTAKEN BY THE DIRECTOR OF TOURISM IN THE AFFIDAVIT FILED IN PILWP NO.40/2018:

58. As noted above in paragraph 4 of the Director of Tourism's affidavit dated 05.03.2019 filed in PILWP No.40/2018, it was stated

that the Calangute beach stretch encompasses the following five entry points:

- a. Sauntavaddo entry point*
- b. Khobravaddo entry point*
- c. Umtavaddo entry point*
- d. Maddovaddo entry point*
- e. Tivaivaddo entry point*
- f. Gauravaddo entry point*

59. The affidavit filed further stated that a demolition/confiscation drive was undertaken from the main entrance of the Calangute beach stretch, and during this drive, illegally placed deck beds/umbrellas/tables/chairs and other illegally placed materials were demolished/confiscated by the Director of Tourism so that even main entrance points could be left relatively free for access to and from the beach. The complaint is that there is congestion at the five entry points due to the haphazard erection of shacks and the placing of deck beds, chairs, umbrellas, etc.

60. If the petitioner's version is correct, the Director of Tourism must ensure that the five entry points above are left free from all such obstructions. The flying squads of the Tourism Department must take immediate action to clear any obstruction at the entry points. Under no circumstances should shacks be permitted to come up at the entry points to obstruct access to and from Calangute Beach. Similarly, these entry points must not be littered with deck beds, umbrellas, tables, chairs, etc. The Director of Tourism is directed to ensure that the entry points to Calangute Beach are left free from above

obstructions to maintain access to and from Calangute Beach. This is necessary to deal with emergencies, which often arise on sea beaches.

TO SURVEY THE SAID STRETCH TO IDENTIFY NUMEROUS VIOLATIONS BY BEACH SHACKS AND ENSURE THAT THE SAID STRETCH IS CLEAN AND DECONGESTED:

61. The above direction prayed for by the petitioner is rather vague. However, we agree with Mr De Sa that the Director of Tourism and other authorities must constantly survey the beach stretches so that violations of the law or the terms and conditions subject to which beach shacks are permitted on the beaches are not unchecked.

62. In PILWP No.40/2018, the Director of Tourism, on affidavit, informed this Court that the flying squad headed by the Assistant Director (Revenue) was constituted to carry on a surprise inspection/confiscations drive and that the same would be continued in future. The Director assured the Court that surprise inspection would be held at least once a week on the Calangute beach stretch. Further, the Court was assured that this exercise would be undertaken at the entry points of the Calangute beach stretch.

63. Similar flying squads must be constituted for other North and South Goa beaches. Such flying squads must hold surprise inspections/drives to ensure that the terms and conditions subject to which the shack allottees are allowed to operate are not breached. The flying squads must also report violations of CRZ Notification 2019,

the Ground Water Act, the Panchayat Raj Act, etc., to the concerned authorities in writing so that such authorities can take action as provided under the law.

64. Therefore, it is now clarified that the requirement of a flying squad will not be restricted only to Calangute and Candolim beaches but must apply to other beaches in the State of Goa where the shacks are permitted to be erected.

FOR DIRECTIONS TO THE TOURISM DEPARTMENT TO ENFORCE THE TERMS AND CONDITIONS OF THE SHACK POLICY AS REFLECTED IN THE PERMISSIONS GRANTED TO ERECT AND OPERATE SHACKS ON THE SAID STRETCH:

65. As noted earlier, the Tourism Department first grants a provisional licence. Based upon this licence, the allottees must obtain permissions from Panchayat, GSPCB, Fire Services, FDA, etc. Further, based upon the provisional licence, the shack allottees must make suitable arrangements for providing toilets, cleaning of garbage, fire safety measures, First Aid, etc. The Tourism Department Officials must then inspect the shack based on a checklist to be maintained by them. Only after being satisfied that all permissions and infrastructure are in order can the final licence for operating the shack be issued.

66. Under no circumstances should the final licence to operate the shacks should be issued unless the shack operators have consent to

operate from the GSPCB and a NOC from fire and emergency services. This does not mean that the final licence can be issued no sooner than these two requirements are fulfilled though the other requirements may not be fulfilled. The Director of Tourism must ensure that all the requirements are fulfilled. Still, it is emphasised that under no circumstances whatsoever should the final licence be issued unless permissions from GSPCB and fire and emergency services are in place. The experience up to now, the shack allottees commence operations based on provisional licences. In any case, the shack allottees commence operations without complying with the directions and conditions subject to which such licences may have been issued.

67. The Director of Tourism rarely bothers to implement the terms and conditions imposed by it. If any complaints are received, usually the same are ignored. After the Director of Tourism is forced to act, a show cause notice is issued and its disposal is unduly delayed. As a result, the shack allottee continues with the shack operations throughout the tourist season without complying with the terms and conditions subject to which the permission was granted or the allotment was made. The proceedings under the show cause notice are often delayed. Once the monsoons start and the tourist season ends, the shacks are dismantled, and the show cause notice is disposed of as infructuous. This *modus operandi* has emboldened the shack allottees to undertake and continue with shack operations in breach of the law and the terms and conditions subject to which such shacks were allotted.

68. Therefore, we direct that in all such cases, only a provisional licence must be issued to the allottees listing the compliances. Based on this provisional licence, the shack allottees must not operate the shacks. After compliances are reported by the shack allottees, the Director of Tourism or authorities appointed by him must inspect the shack and record in writing the compliances based upon a checklist. Only upon satisfaction with compliances should the final licences be issued, based upon which the shack allottees can commence the shack operations. These directions, in consonance with the practice prescribed (but rarely followed), must be complied with from the 2023 season onwards. The Director of Tourism shall ensure strict compliance with such procedure.

GENERAL DIRECTIONS :

69. The respondents must comply with the directions indicated above in letter and spirit.

70. The respondents, particularly the Director of Tourism, must also consider the plight of the shack allottees. In this regard, the Director of Tourism must consider making allotments and issuing provisional licences at least a month or two before the tourist season commences each year. This will help the shack allottees to apply for permissions from GSPCB, Panchayat, etc., well in advance. The Director of Tourism must also not delay inspections after the shack allottees report compliances. A checklist must be maintained, and this

must also be shared with the shack allottees so that they can report compliances expeditiously.

71. The concerns of the shack allottees or the Shack Owners Welfare Society of Goa or any other representative bodies representing the shack owners must be addressed while formulating and implementing the shack policy. By this, we do not mean that all their suggestions must necessarily be accepted. All that we mean is that necessary consideration should be shown to their concerns because they are one of the main stakeholders of the policy. The policy must be consistent with the law and not derogate from the law. Such policies are executive and cannot conflict with the legal provisions.

72. Mr De Sa complained that several shack allottees assign their licence or privilege to other parties for a premium. If this is so, the Director of Tourism should ensure that its condition against assigning is implemented in letter and spirit. The privilege of putting up a shack and conducting business from that place is for the benefit of the shack allottees selected through a process. There are prescribed eligibility conditions. If an eligible allottee assigns this privilege to an ineligible party, that would amount to defrauding the selection process.

73. This privilege cannot be assigned to parties ineligible to secure allotments in the first place. Therefore, the Tourism Department must maintain a direct vigil, and immediate action should be taken in case of such an assignment. This allotment is only a temporary license. By its nature, such a licence is not transferable. The terms of allotment say

so. The laxity is in implementation. The shack allottees are mere licensees and can claim no other rights on beaches.

74. Typically, no structures can be put up in the NDZ under the CRZ Notification. But after the State Of Goa held out that the locals had been undertaking this activity over a period, and some provision for their employment had to be made, an exception was carved out. The allotment eligibility criteria reflects this position. Therefore, after the allotment is secured, an allottee cannot assign the allotment (for a huge premium) to someone who did not or could not participate in the allotment process. That would amount to playing fraud on the entire process.

75. The Rule in the above petition is disposed of in the following terms:

A] The sinking of bore wells on coastal stretches/beaches in NDZ and other areas under CRZ Notification and scheduled areas under the Groundwater Act is prohibited. The Ground Water Officers and the GCZMA must ensure that no bore wells are sunk, or groundwater is extracted from such areas in Goa. The directions for survey, inspection, sealing, dismantling and prosecution in paragraphs 14, 15, 32, 43 and 44 are reiterated.

B] Installing septic tanks, soak pits, and garbage pits on coastal stretches/beaches in NDZ and other areas under CRZ Notification and scheduled areas under the Ground Water Act is prohibited. Respondents 1 to 6 must prevent or remove such installations immediately. The directions for a

survey, revocation of shack allotments, prosecution etc., in paragraphs 48,49 and 52 are reiterated.

C] The directions and undertakings furnished in PILWP No.40/2018 concerning the decongestion and placing of beach chairs and deck beds on the said stretch are reiterated. Further, we direct that such directions about decongestion, mainly at the entry points, would apply to all the coastal beaches in the State of Goa. The Tourism Director must ensure compliance. The directions in paragraphs 56 and 57 are reiterated.

D] The direction about constituting flying squads in paragraph 63 is reiterated.

E] The directions in paragraphs 66 and 68 about compliance with the terms and conditions of the shack allotment or provisional allotment are reiterated. Similarly, the directions about the assignment in paragraph 73 are also reiterated. The Tourism Director must ensure compliances.

F] No costs.

76. All concerned to act on an authenticated copy of this order.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.

NITI K
HALDANKAR

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