

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.804 of 2009**

David D'souza
House No.7/59,
Cobrawaddo,
Calangute, Bardez, Goa .. Petitioner

Versus

(1)(a) Union of India,
through the Ministry of
Environment and Forests,
Department of Environment,
Forests and Wildlife,
Government of India,
having its Registered Office at
Paryavaran Bhavan, CGO Complex,
Lodhi Road, New Delhi-110 003,
INDIA

1. The Goa Coastal Zone Management
Authority,
through its Member Secretary,
C/o Department of Science,
Technology and Environment,
Government of Goa, Opp.
Saligao Seminary, P.O. Saligao
Bardez, Goa- 403 511

2. Mr. Ravindra Jana
residing c/o Narain Divkar,
Mainam Bhatti, Arpora,
Bardez, Goa .. Respondents

Mr. Pankaj Vernekar, Advocate for the petitioner.

Mr. Vivek Rodrigues, Government Advocate for the respondent
no.1.

Mr. Shivan Dessai, Advocate for the respondent no.2.

**CORAM :- F. M. REIS, &
C. V. BHADANG, JJ**

DATE : 17th November, 2015

ORAL JUDGMENT : (Per F. M. REIS, J.)

Heard Shri Pankaj Vernekar, the learned Counsel appearing for the petitioner, Shri Vivek Rodrigues, the learned Government Advocate appearing for the respondent no.1 and Shri Shivan Dessai, the learned Counsel appearing for the respondent no.2.

2. Upon hearing the learned Counsel appearing for the respective parties and on perusal of the impugned order dated 03/11/2009, passed by the respondent no.1, GCZMA, the short point for consideration in the above writ petition is whether the subject construction of the residential house, constructed by the petitioner meets the requirements of FAR and coverage as provided in the CRZ Notification. The disputed construction came to be put up pursuant to a licence for repairs obtained by the petitioner on 14/07/1998. On perusal of the impugned order, we find that the construction was held to be unauthorised only on the ground that it consumes excess FAR than permissible.

3. Shri Shivan Dessai, the learned Counsel appearing for the respondent no.2 has pointed out that though he had disputed that the definition of FAR as found in the Planning Regulations can be read into the CRZ Notification, nevertheless according to him, the exercise whether the subject construction exceeds the permissible FAR or not, is a matter which the respondent no.1 will have to reexamine, after hearing the parties.

4. However, on perusal of the impugned order passed by the respondent no.1, we find on the basis of the report submitted by the Town and Country Planning Department that it clearly shows considering the amalgamation of the two plots that the permissible FAR is 429 square metres, whereas, the subject construction admeasures 401.75 square metres. Thus, as the Competent Authorities had come to the said conclusion and as the definition of FAR as found in the Planning Regulations can be read into the CRZ Notification, the question of directing the respondent no.1 to reexamine this aspect, would be an exercise in futility. On perusal of the impugned order, it appears that the only ground, on which the Authorities have come to the conclusion that the FAR has exceeded, is on the basis that the definition of FAR as found in the Planning Regulations cannot be

read into the CRZ Notification. But however this contention cannot be accepted. Hence, the question of referring the matter to the respondent no.1 to decide the show cause notice afresh is not at all necessary.

5. In view of the above and considering that the petitioners have not exceeded the permissible FAR based on the said report of the Planning Department, we find that the impugned order passed by the respondent no.1 cannot be sustained and deserves to be quashed and set aside. Hence, the impugned order dated 03/11/2009 in respect of the residential house located in the property bearing Survey No.245/2, which is the subject matter of the above show cause notice, is quashed and set aside.

6. Rule is made absolute in the above terms, with no order as to costs.

SMA C. V. BHADANG, J.

F. M. REIS, J.