

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 274 OF 2016

IN

WRIT PETITION NO. 333 OF 1993

THE GOA FOUNDATION THR. ITS
SECRETARY, DR CLAUDE ALVARES.

... Applicant

Versus

THE NORTH GOA PLANNING AND
DEVELOPMENT AUTHORITY THR. ITS
MEMBER SECRETARY AND 8 ORS.,

... Respondents

Ms. Norma Alvares, Advocate for the applicant.

Mr. S. D. Lotlikar, Advocate General, with Mr. D. Lawande,
Additional Advocate General with Ms. P. Bhandari, Additional
Govt. Advocate for the respondents No.1 to 4.

Mr. Rafiq Dada, Senior Advocate with Mr. J. P. Supekar, Advocate
for the respondent No.7 & 9.

Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.

Date:- 24th October, 2016

P.C.:

Additional affidavits filed on behalf of the respondents no.1
and No.7.

2. Heard Ms. Norma Alvares, learned Counsel appearing for
the applicant, Mr. S. D. Lotlikar, learned Advocate General
appearing for the respondents No.1 to 4 and Mr. Rafiq Dada, learned
Senior Advocate appearing for the respondent No.7.

3. Writ Petition No.333 of 1993 was disposed of by this Court

vide Judgment dated 29th June, 2015, inter alia, issuing the following directions :

(i) The respondent nos. 1 to 4 or any other designated competent authority shall proceed to examine whether any of the construction activities carried out by the respondent no.7 comes towards the river side of the imaginary line to be drawn from the Light House shown in the plan of the Court Commissioner parallel to the High Tide Line in the manner as stated herein above and thereafter proceed to take necessary action against the respondent no.7 for restoring such area in accordance with law within six months from today.

(ii) The respondent no.2 shall take all measures to prevent the erosion of the bank and siltation of the river Mandovi along the concerned land of the respondent nos.7 and 9.

(iii) The respondent nos.7 and 9 shall not obstruct the access of the public to the subject beach through the said reserved path and the respondent no.2 shall take all measures to make such path accessible to the said beach in accordance with law.

4. An application was filed by the petitioner, inter alia, raising a grievance that despite of such directions, no effective measures were taken by the concerned respondents in complying with the directions issued while disposing of the said petition. Thereafter, the respondent No.3 filed a report contending that the directions in the said Judgment have been duly complied with. But, however, the

learned Counsel appearing for the petitioner has disputed such report and pointed out that the directions have not been complied with in terms thereof.

5. Mr. Lotlikar, learned Advocate General appearing for the respondents No. 1 to 4 submitted that this Court while passing the said Judgment did not have enough material to locate the High Tide Line (HTL) of the river and the directions were issued to the concerned Authorities to identify the HTL and draw the imaginary line parallel to such HTL from the authorised structure which was stated to be the Light House and therefore take necessary action in accordance with law with regard to any construction activities located towards the river side of such imaginary line. It is further pointed out that experts were appointed to examine and identify the HTL of the river and as such, according to him, it was found that there was no structure on the river side of such imaginary line drawn by such experts. The learned Advocate General has also taken us through different portions of the Judgment to point out that the decision to examine whether any constructions are contrary to the CRZ Regulations was left to be taken by such Authority.

6. Mr. Rafiq Dada, learned Senior Advocate appearing for the respondent No.7 & 9 has submitted that the HTL has to be constituted as in existence as on the date of the coming into force of the CRZ Notification in February, 1991. The learned Senior Counsel

submits that according to the land records, there was some erosion of land which has been duly examined by the experts while preparing such report.

7. Ms. Norma Alvares, learned Counsel appearing for the petitioner, however, points out that the HTL would have to be examined in terms of the Environment Protection Act by the Authorities constituted thereunder to carry such an exercise. It is further pointed out that the directions issued by the Chief Secretary-respondent No.2 to comply with the directions as contained in the said Judgment in a particular manner have not been followed by the Committee which had submitted the report. The learned Counsel has, thereafter, taken us through the report to point out that the report is totally contrary to the directions issued by this Court whilst disposing of the writ petition.

8. Upon hearing the learned Counsel appearing for the respective parties, we find that this Court had in fact indicated the manner in which the exercise has to be carried out in paras 28, 34 and 35 of the said Judgment. This Court had also observed that such an exercise would have to be carried out by the GCZMA which was the Authority constituted under the Environment Protect Act to examine environmental issues. In such circumstances, we find that constituting a Seven Member Committed, keeping aside the GCZMA by the concerned respondents is not at all justified. As rightly

pointed out by the learned Counsel appearing for the petitioner, the HTL would have to be identified in terms of the directions issued by this Court in the said Judgment.

9. In such circumstances, we are not inclined to accept the report filed by the respondents which is stated to be in compliance with the directions issued by this Court in the said Judgment as the directions issued are not in conformity of our Judgment. As such, we direct the GCZMA duly constituted under the Environment Protect Act, to comply with the directions issued by this Court in the said Judgment dated 29/06/2016 in Writ Petition No.333/1993. Needless to say, the HTL would have to be identified in accordance with the Environment Protect Act, 1986 and the CRZ Notification of 1991, within three months. It is made clear that we have not conclusively examined the correctness of the report though, on bare perusal of the said report, the exercise has been carried out on the basis of the High Water Line, which was not the direction issued in the said Judgment.

The application stands disposed of accordingly.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

ssm.