

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO.377 OF 2015.

Cedric Bosco Savio Lobo,
R/o 1-C Shivkrupa building,
Opp. Don Bosco High School,
Panjim-Goa, 403001.

..... Petitioner.

Versus

1. State of Goa, represented by its Chief Secretary Having office at Government Secretariat, Porvorim Bardez.
2. The Goa Coastal Zone Management Authority (GCZMA) Represented by its Member Secretary, Having office at 3rd Floor, Dempo Towers, Patto Plaza, Panjim Goa.
3. Mrs. Augusta D'souza, (since deceased) Through her legal representatives,
- 3a. Mr. Henrique De Souza, major of age, married, in service R/o Villa De Souza House No. B-249, Opp. Syndicate Bank Betim, Bardez-Goa, Pin Code 403101.
- 3b. Mrs. Lucia De Souza, major of age, married, in service, R/o R/o Villa De Souza House No. B-249, Opp.

Syndicate Bank Betim,
Bardez-Goa, Pin Code
403101. Respondents.

Petitioner in person.

Shri P. Dangui, Addl. Government Advocate for the respondent nos.1 and 2.

Shri S. G. Desai, Senior Advocate with Ms. Ketki Pednekar, Advocate for the respondent nos.3(a) and 3(b).

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

Date: 11th July, 2016.

ORAL ORDER (Per F. M. REIS, J)

The above petition *inter alia* seeks for a direction to the respondent nos.1 and 2 and all other concerned authorities to initiate legal proceedings for the demolition of the house bearing no. B-249 located in Survey no.62/1 of village Panchayat of Reis Magos.

2. Briefly, the case of the petitioner is that in the village of Betim there exists a property bearing survey no.62/5 which is situated entirely within 100 metres of the high tide line of river Mandovi and falls within the No Development Zone of CRZ-II area of Betim village. It is further his case that on 19.7.1991 Mrs. Augusta D'Souza made an application in Form B to the

North Goa Planning and Development Authority ("NGDPA" for short) for the construction of a residential bungalow in the property Surveyed under No. 62/5 of village Betim. It is further his contention that said Mrs. Augusta D'Souza has falsely represented at point no. 12 in Form 11 that the property is not in the vicinity of the coastal line and not within 100 metres from the high tide line. It is further his case that based on such application, the Member Secretary of the NGPDA carried out a site inspection on 7.8.1991 and filed a site inspection report on 8.8.1991. The construction permission was granted on 16.9.1991. The petitioner has raised different contentions to the legality of such license essentially on the ground that the subject constructions falls within the no development zone. It is further pointed out that the approved construction license was granted subject to obtaining licenses from the panchayat and also under the Goa Land Revenue Code. A conversion sanad was issued on 2.4.1993 in respect of the subject bungalow. It is also contended that NGPDA permission dated 16.9.1991 expired on 16.9.1994 and hence no permission for construction could be granted by the village Panchayat. It is further his case that CRZ notification of 1991 clearly provides that 100 mtrs from the high tide line of the river is a no development zone and according to the

petitioner the subject construction comes within such area. It is further pointed out that the house no.B-249 was constructed after year 1991 and it is hardly 100 mts from the high tide line of the river. A complaint to that effect was lodged by Mrs. Lizette D'Cruz to the Member Secretary of Goa Coastal Zone Management Authority ("GCZMA" for short) who issued a show cause notice to the respondent no. 3(a) and 3(b) in the year 2008. The replies were filed by the respondent no.3(a) and 3(b) and the report was called from a Deputy Collector. He further pointed out that the report suggests that house no. B-249 is in violation of CRZ Rules as it falls within 100 metres of the High Tide Line (HTL). The report was also submitted by the Deputy Collector as well as the Mamlatdar of Bardez in respect of the subject construction. It is contended that in view of the said report the said house no. B-249 is in blatant and serious violation of CRZ Notification. As no action was taken upto year 2013 for demolition of illegal construction of the subject house bearing no. B-249, the Deputy Collector and the SDO submitted a report to the GCZMA and despite the fact that the said construction had been carried out in gross violation of the Environment Protection Act and the CRZ notification of the year 1991 no action was being taken. He further submitted that he

thereafter sent a email to the GCZMA asking what action was taken in that regard. He further submitted that a letter was sent on 26.8.2013 to the Chief Secretary of the Government of Goa requesting him to take action and ultimately on 25.11.2013 an application was filed by the petitioner to the National Green Tribunal, Pune. In the meantime, the member secretary on 27.1.2014, sent a notice of site inspection intimating that the site inspection would be carried out on 3.2.2014 and ultimately, according to the petitioner on 28.3.2014, the Inquiry Committee of GCZMA filed a report which stated that the said Authority of GCZMA may regularise the said structures as the procedure for approval of construction was initiated by Mrs. Augusta D'Souza on 6.11.1990. The petitioner has challenged the said directions of the GCZMA essentially on the ground that the construction was put up 9 years after CRZ notification in the year 1991 in violation of the such Regulations.

3. The respondent no. 3 has filed a reply disputing the said contention and contended that they have brought on record sufficient material to substantiate that the initial application for permission was made in the year 6.11.1990 much before the coming into force of CRZ Regulations and, as such, all the

developments were in accordance with law.

4. The petitioner in person has vehemently argued that the records patently revealed that the development has been carried out in the no development zone. He has minutely taken us through the construction licenses which were obtained by said Augusta D'Souza on two occasions, one to put up a bungalow which was dated November, 1990 and the subsequent one in August 1991, which according to the petitioner, is the subject construction. It is further pointed out that the respondents have deliberately suppressed the fact of filing of a plan on record which would itself disclose the false stand taken by the respondent. He has further pointed out that at page 68, a plan has been produced wherein there are two structures being described by letter "A" and the other by letter "B" and according to him, as far as letter "B" is concerned there is no license obtained from the Statutory Authority. It is further submitted that the petitioner has *locus standi* to file the above petition and, as such, action in accordance with law has to be directed. The petitioner has relied upon different judgments of the Apex Court to *inter alia* show that there can be no regularisation of illegal structure in no development zone. He has relied upon the

Judgment in CA 4941-2013 in the case of **Association for Environment Protection Vs State of Kerala**, the judgment of this Court in Writ Petition No. 150/1998 in the case of **Leonard J. S. Fernandes and others Vs. Te Canacona Municipal Council and others**, the judgment of the Apex Court reported in **2004(5) SC 386** in the case of **Piedade Filomena Gonslves Vs State of Goa and others** and another judgment of the Apex Court in **SLP (Civil) no. 24390-24391 of 2013** in the case of **M/s Vaamika Island(Green Lagoon Resort) Vs. Union of India and others**.

5. On the other hand Shri S. G. Desai, learned Senior Counsel for the respondent no.3(a) and 3(b) has pointed out that the petition itself is barred by laches. It is further pointed out that the petitioner's brother and sister in law have litigation pending against the respondent nos.3(a) and 3(b) in respect of the subject property, which is described in the Inventory proceedings upon the death of Mrs. Augusta. The learned Senior Counsel further pointed out that the petition is grossly barred by laches. It is further pointed out that the license was applied before the coming into force of the CRZ Regulations of 1991 and as such, the contention of the petitioner that the development is

contrary to the CRZ Regulations is misconceived. It is further submitted by the learned Senior Counsel that the respondent nos. 3(a) and 3(b) have all the permissions from the Statutory Authority and consequently, there is no case made out for grant of any relief in the above petition. It is further submitted that the petitioner is busybody who is unnecessarily filing petitions on untenable grounds. Another petition filed by the petitioner against the brother of the respondent no.3(a) being Writ Petition No. 742/15 came to be rejected by this Court by judgment dated 17.3.2016.

6. We have considered the submissions of the petitioner and the learned Counsel appearing for the respondent nos.3(a) and 3(b) and we have also gone through the records.

7. It is not disputed that this petition is not a Public Interest Litigation on the ground that there is a violation of CRZ Regulations, 1991 caused by degradation of the environment to the public. The petitioner has fairly admitted that he is not personally affected by the subject construction as he is not a resident of the locality. The only aspect to be examined in such circumstances is whether there is any failure on the part of the

Statutory Authorities to perform their public function.

8. In the present case admittedly the permissions were obtained pursuant to the licenses which were granted in the year 1991 and 1997. The construction was completed way back in the year 1997. The petition has been filed in the year 2015. It is settled law that while exercising extra ordinary jurisdiction under Articles 226 and 227 of the Constitution of India, certain care has to be taken whilst exercising such discretion on the aspects of delay and laches. In the present case it is not disputed that the subject property is a part of the estate of the said Augusta D'Souza which is pending for distribution upon her death, wherein the brother of the petitioner alongwith his sister in law are also parties. During the course of arguments, the petitioner was unable to explain how he is connected with the disputed structure. The petitioner is not a resident of the locality, but however claiming that he came to know about the construction only in the year 2014. It is not disputed that the ancestral house of the private respondent, which is visited by the brother of the petitioner is located on the other side of the main road of the said property. In such circumstances, it is hard to believe that the petitioner learnt about the existence of such structure

now after more than 15 years back. Apart from that while disposing the Writ petition No. 742/2015 by judgment dated 17.3.2016 this Court has observed at para 14,15 and 16 thus:-

“14. The house bearing No.B-75 is shown in Cadestral plan. Late Mrs. Augusta D'Souza – respondent no. 3 submitted all the relevant documents for re-construction of the bungalow. It is submitted that only after the plans and permission issued by PWD vide letters dated 9.11.1990. 7.12.1990 as also Health Officer dated 9.11.1990, the respondent no.3 commenced the construction. The panchayat has issued occupancy certificate on 10.1.2000. So, looking to the above report, it appears that the respondent no.3 has re-constructed the house after demolition of old house, that too within an old FSI and on existing ESI, on existing plinth area and existing density.

15. Further it appears from the record that the petitioner is a relative of one Miss. Maria, who is wife of the brother of the petitioner and there was litigation between Miss. Maria D'Souzaq and the respondent nos.3(a) and 3(b). Probably, because of this, the

present petition is filed. The petitioner has no concern with the construction. The petitioner is resident of Panjim and the disputed structure is situated at village Reis Magos. During the course of arguments, the petitioner was unable to explain how he is related with the disputed structure.

16. The subject construction was completed in the year 2000 and the necessary occupancy certificate was issued in favour of the respondent no. 3 inspite of the fact that the present petition was filed in the year 2015. Therefore, the petition certainly suffers from delay and laches."

9. The Survey Number of the property where the house no. B-75 is also located in the same property and the construction was carried out at the same time by the brother of the respondent no.3(a). For the aforesaid reasons, we find that there is no reason to take a different view in the present petition. As far as the subject structure B-249 is concerned, it is to be noted that though the petitioner had strenuously brought to our notice that the application for development was sought about two or three months before the CRZ Regulations came

into force in February, 1991, but however this aspect has been taken note of by the GCZMA and taken a view that the license was issued pursuant to an application filed in November 1990. The disputed question of fact with that regard cannot be examined by this Court in the present petition but it remains to be noted that the petition is grossly barred by laches and delay. The respondents have produced all the licenses from the Town and Country Planning Department as well as the NGPDA as well as the conversion sanad issued by the Collector. All the requisite permissions were obtained by the respondent no.3 and there is nothing to show that any of the authorities have noted that the construction was coming within the No Development Zone.. In fact the said Augusta D'Souza, who had put up the construction, has already expired and the respondent nos. 3(a) and 3(b) are the legal representatives of the said deceased. In such circumstances, it would not be appropriate at this stage to grant any relief in respect of subject residential bungalow bearing house no. B-249 which is existing in the private property for the last over 15 years.

10. Be that as it may, as far as the structure shown by the letter "B" in the plan at page 68 of the paper book is

concerned, we find that though it is contended by Mr. Desai, learned Senior Counsel that such construction is depicted in survey records which is strongly objected by the petitioner, we find it appropriate that as far as the structure described by letter "B" as seen in the plan at page 68 is concerned the GCZMA/the respondent no. 2 is directed to examine the validity or otherwise of such structure after hearing the concerned parties in accordance with law. Subject to above and the directions issued to GCZMA in respect of the structure described by letter "B", the petition stands disposed off, accordingly.

NUTAN D. SARDESSAI J.

F. M. REIS, J.

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