

Meena

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 1067 OF 2017

Purshuram Kolkar Petitioner
Versus
Goa Coastal Zone Management Authority
Through its member Secretary and 3 ors Respondents.

Mr. Nigel Da Costa Frias and Mr. V. Sawant, Advocates for the Petitioner.

Ms. Purna Bhandari, Additional Government Advocate for the Respondents.

Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.

Date : 5 December 2017.

ORAL ORDER: (Per N.M. Jamdar, J.)

This petition challenges the order passed by Respondent No.1 the Goa Coastal Zone Management Authority, directing demolition of structure of the petitioner erected in the Intertidal Zone at Katem Baina, Goa on the ground of violation of the Coastal Regulation Zone notification.

2. The Goa Coastal Zone Management Authority- (GCZMA) is constituted by the Ministry of Environment & Forests to deal, inter alia, with violations of the Coastal Regulation Zone

Notification and its implementation. The Petitioner claim to be fisherman residing at village Katem Baina, Vasco, Goa since long and claims to carry out fishing activities.

3. A notice was issued to the Petitioner on 18/05/2016 by the Goa Coastal Zone Management Authorities to show cause why their structures, which were stated to be constructed in the intertidal zone in Baina Beach, be not demolished. From the notice following facts emerge.

4. Deputy Collector, Mormugao sent a report to GCZMA pertaining to 205 illegal hutments/ structures constructed in Inter Tidal zone on Baina Beach. The Report stated that these structures were erected in total contravention of the CRZ Notification, 1991/2011, and the illegal hutments/ structures erected on the beach were required to be removed. An application No. 49/2015 was also preferred by one applicant before the National Green Tribunal, Western Zone, Pune seeking intervention of the Tribunal, complaining that several structures were constructed on the sandy portion of the Baina beach by destroying the sand dunes in violation of CRZ Notification. The Tribunal, by order dated 25 May 2015, directed the authorities to take action as per law.

5. The matter was then discussed by the GCZMA in its

meeting held on 1 July 2015. It was decided to issue show cause notice for action under Section 5 of the Environment (Protection) Act, 1986 read with rule 4 of the Environment (Protection) Rules, 1986, to all the parties/ owners of the structures along the Baina beach, to show within 15 days. Taking note of the decision and action taken by the GCZMA, the National Green Tribunal disposed of the Application bearing No. 49/2015 (WZ) by order dated 16 September 2015, observing that GCZMA may place on record compliance report on or before 17 October 2015. Illegal structures numbering 157 were demolished and a compliance report was filed before the Tribunal.

6. Earlier a Writ Petition bearing no. 231/2010 filed by Board of Trustees of the Port of Mormugao in the High Court seeking demolition of the illegal structures at Baina and Katem Baina. The Division bench on 11 March 2013 had directed the respondents therein to file a status report. GCZMA received a further letter dated 2 December 2015 from the office of Deputy Collector, Mormugao, stating that Mamlatdar of Mormugao had conducted a survey with respect of structures existing on Katem Baina Beach and submitted checklist containing particulars of 121 structures and the violators, including the Petitioner. GCZMA scrutinised the checklist submitted by the Deputy Collector,

Mormugao and came to the conclusion that there was total violation of CRZ Notification by the Petitioner and others. Accordingly show cause notices was issued to the Petitioner and to various other persons. The Petitioner replied and *interalia* contended that they are staying in the structures since long and they are traditional fisherman. GCZMA concluded that as per the CRZ Notification 2011, the entire belt of 100 mts. from the High Tide Line (HTL) of river and 200 mts. from the HTL from the sea, is designed as the No Development Zone (NDZ) and hence no construction whatsoever are permissible in the said belt. Therefore by impugned order dated 7 April 2017, the GCZMA directed demolition of the structures of the Petitioner and others, in exercise of the powers conferred by section 5 of the Environment (Protection) Act, 1986 read with sub-rule (3) (a) of rule 4 of the Environment (Protection) Rules, 1986. This order is impugned.

7. Heard Mr. Nigel Da Costa Frias, learned Advocate for the Petitioners and Ms. P. Bhandari, learned Additional Government Advocate for the Respondents.

8. A preliminary objection is taken on behalf of the Respondent-State that the Petitioners have an alternate remedy of filing of an appeal before the National Green Tribunal under Section 16 of the National Green Tribunal Act, 2010. According to the

Respondent-Authorities, since the order is passed by GCZMA under Section 5 of the Environment Protection Act 1986, as per clause 16(g) an appeal is maintainable before the Tribunal, wherein the petitioners can raise all their contentions. It is submitted that in view of the statutory remedy of appeal, the petition should not be entertained.

9. The learned Advocate for the Petitioner sought to contend that there are large number of persons like the Petitioners and it will be inconvenient for them to file an appeal and therefore this Court should consider the Writ Petition and there is no bar to entertain the Writ Petition even though there is an alternate remedy. It is further contended that the petitioners have raised various contentions, which may be beyond the jurisdiction Tribunal to decide, such as a question whether the State should issue a notification declaring the concerned village as a fishing village. It was contended that the Writ Petition bearing No. 890/2016 seeking direction to the State Government to issue a notification for declaration of the concerned village as Fishing Village, is pending. It was further contended that without issuing such notification the Respondent-Authorities are proceeding to demolish the structures. It was further contended that the Tribunal had not specifically directed that the structures be removed, but only gave general

directions to act as per law and the Respondent-Authorities, without considering the matter in correct perspective, have proceeded to pass the impugned order. It was contended that the material on record clearly indicates that the Petitioners are traditional fishermen, and therefore, in view of the clause 3 of the Coastal Regulation Zone Notification dated 6 January 2011, as applicable to the State of Goa, the structures cannot be demolished.

10. Clause 3 of the Notification which deals with the CRZ of Goa on which reliance is placed reads thus :

3. CRZ of Goa.-

In view of the peculiar circumstances of the State Goa including past history and other developments, the specific activities shall be regulated and various measures shall be undertaken as follows:-

(i) the Government of Goa shall notify the fishing villages wherein all foreshore facilities required for fishing and fishery allied activities such as traditional fish processing yards, boat building or repair yards, net mending yards, ice plants, ice storage, auction hall, jetties may be permitted by Grama Panchayat in the CRZ area;

(ii) reconstruction, repair works of the structures of local communities including fishermen community shall be permissible in CRZ;

(iii) purely temporary and seasonal structures customarily put up between the months of September to

May;

(iv) the eco sensitive low lying areas which are influenced by tidal action known as khazan lands shall be mapped;

(v) the mangroves along such as khazan land shall be protected and a management plan for the khazan land prepared and no developmental activities shall be permitted in the khazan land;

(vi) sand dunes, beach stretches along the bays and creeks shall be surveyed and mapped. No activity shall be permitted on such sand dune areas;

(vii) the beaches such as Mandrem, Morjim, Galgiba and Agonda has been designated as turtle nesting sites and protected under the Wildlife Protection Act, 1972 and these areas shall be surveyed and management plan prepared for protection of these turtle nesting sites;

(viii) no developmental activities shall be permitted in the turtle breeding areas referred to in sub-paragraph (vii).

11. The petitioners contention is that the Government of Goa has not yet notified the villages as Fishing Villages as per Clause 3(i), which are clearly sought to be protected. It is contended that no action of demolition can take place in a Fishing Villages on the ground that the structures violate CRZ notification. Bare perusal of the notification shows that to qualify as a Fishing Village, in the first place the criterias in Clause 3(i) must exist. A Fishing Villages would be a place where certain activities as specified are carried out. The

notification indicates them to be fishing and fishing related activities such as fish drying yards, auction halls, net mending yards, traditional boat building yards, ice plant, ice crushing units, fish curing facilities. Second obvious position is that those who seek protection of the concept of Fishing Village must be integral part thereof. Therefore, even before the argument is advanced that there is an absence of a Notification, if the petitioner seeks to take benefit of the concept of Fishing Village, then there must exist clear factual matrix that the criterias are satisfied and that the Petitioner is an integral part of the concept of Fishing Village. There cannot be a notification of Fishing Village in absence of the criterias, neither there is an absolute discretion conferred on the Authorities to declare any area as a Fishing Village unless parameters indicated in the CRZ Notification exist. Since, an order has been passed against the petitioner on the ground that there is a violation of the Coastal Zone Regulations and it is the case of the petitioner that they are fisherman residing in a fishing village, the above issue of fact can be addressed by the petitioners before the Tribunal in an appeal under section 16 of the Act. Our attention is also drawn to Section 14 of the Act where the Tribunal has jurisdiction to decide the substantial questions of law relating to the environment. The petitioner can always argue that if all the criterias of a fishing village are present and that the Petitioner is an integral part, then a formal notification for

protection against the intended activity of demolition for violation of CRZ notification as far as State of Goa is concerned, is not necessary. Therefore this facet cannot be a ground for bypassing the alternate remedy of appeal to approach this Court directly. Equally meritless is the argument that since there are several similarly situated persons, Court should entertain the Petition.

12. Thus all the contentions raised by the petitioner can be considered by the Appellate Authority Tribunal. The Appellate Authority can also consider whether it requires an additional evidence and ample powers are vested with the Appellate Authority Tribunal to call for evidence or to direct the Authority of the first instance to carry out a fresh exercise. The Petitioners also sought to contend in absence of Coastal Zone Management Plan, the action against the Petitioners for the demolition cannot be taken. Ultimately what the petitioner is aggrieved by, is the order of demolition, against which order the petitioner has a remedy of statutory appeal. The Tribunal is vested with all the powers to test the merits of the decision taken by Respondent No.1- GCZMA under Section 5 of the Act. In our opinion therefore, all the grounds raised by the Petitioner can be urged before the Tribunal as the Appellate Authority and the Writ Petition need not be entertained.

13. The learned Counsel for the Petitioner sought extension of the protection. Petitioner alongwith others had approached this Court. An ad-interim order passed by this Court which is operating since April 2017. The learned Advocate for the Petitioners sought to contend that they have been occupying the structures in question since long. The learned Additional Government Advocate submitted that the structures are unauthorized and in some cases there is an encroachment on Government land. Be that as it may, since this Court had granted ad-interim order and structures were not were demolished, we would continue the same, only with a view to so to enable the Petitioner to approach the Tribunal in an appeal. Continuation of protection, if any, will be decided on its own merit by the Tribunal. The impugned order was passed on 7 April 2017, a consolidated petition on behalf of all several persons was filed immediately within a period of 30 days, the matter was adjourned for the State to file reply. This Court had granted ad-interim order which has continued till date. Therefore, the appeal will not be dismissed by the Appellate Authority only on the ground that the appeal is beyond the period of limitation as the Petitioner was prosecuting their remedy in this Court, provided the appeal is filed within period 8 weeks.

14. Accordingly, the Writ Petition disposed off on the

ground that the Petitioner has an adequate alternate statutory remedy. The structure of the Petitioner will not be demolished for a period of eight weeks from the date the order is uploaded. Further continuation, if any, will strictly be on its own merits, uninfluenced by the fact that this Court had granted ad-interim relief. All contentions of the parties open. In the meanwhile, the Petitioner will also maintain *status quo* in respect of the structure.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.