

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

PIL WRIT PETITION NO.26 OF 2017

The Goa Foundation,
through its Secretary,
Dr. Claude Alvares, G-8,
St. Britto's Apartments, Feira Alta,
Mapusa, Goa 503 507.

..... Petitioner.

Versus.

1. Goa Coastal Zone Management
Authority, 1st Floor, B-Wing,
Pandit Deendayal Upadhyay Bhavan
Pundalik Nagar, Alto, Porvorim, Goa
403 521.

2. State of Goa
Through its Chief Secretary,
Secretariat, Porvorim, Goa.

3. (Goa Marriott Resort,
3rd Floor, Karina Chambers,
St. Inez, Panaji, Goa 403 001) stands
deleted, vide order dated 11/9/17 and
substituted by :

V.M. Salgaocar & Brothers Pvt. Ltd.,
Salgaocar House,
Dr. Francisco Luis Gomes Road,
Vasco da Gama, Goa 403 802.

..... Respondents.

Ms. Norma Alvares, Advocate for the Petitioner.

Mr. D. Lawande, Advocate General with Mr. Pradosh Dangu, Government Advocate for Respondent Nos.1 & 2.

Mr. Rafiq Dada, Senior Advocate with Mr. Raju Subramaniam, Senior Advocate, Mr. Devidas J. Pangam, Mr. Firdosh Puniwalla, and Mr. J. Supekar, and Mr. Rishit Badani, Advocates for respondent No.3.

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

Reserved on : 6 June 2018.

Pronounced on : 24 August 2018.

JUDGMENT: (Per N.M. Jamdar, J.)

Rule. Rule made returnable forthwith. Respondents waive service. Taken up for final disposal.

2. This Petition concerns a hotel in Goa called the Goa Marriott Resort. The Hotel is located near the Gaspar Dias Beach at Panaji, where the river Mandovi meets the Arabian Sea.

3. In the year 1993, The Goa Foundation filed a Writ Petition No. 333 of 1993 making a grievance that the Hotel breached the Coastal Regulation Zone restrictions. The Division

Bench disposed of the Petition on 29 June 2015. The Court directed the authorities to draw a line parallel to the High Tide Line from the Light House, a structure nearby. The authorities were to determine whether any construction of the Hotel falls towards the river side of this line. After that to take necessary action against the Hotel. The Hotel was directed take all measures to prevent the erosion of the sand bank and the siltation of the river. The Hotel was directed to remove the obstructions to the access of the public to the beach.

4. The Goa foundation has filed the Petition with a grievance that the Authorities are circumventing the directions of this Court.

5. The Hotel construction is on the coast. It is necessary to advert to the concept of the Coastal Zones. India has a rich coastal and marine ecosystems. The already fragile ecology of the coastal regions of seas, bays, estuaries, creeks, rivers, and backwaters if not protected, is vulnerable to abuse. The degradation of the coastal zone affects the livelihood of the millions. This, in turn, has an impact on the economic growth. Thus the Coastal ecosystems have economic as well as a social value. A large number of people living by the coast depend on the natural resources for their livelihood. Poor planning and a lackadaisical approach can threaten the coastal ecosystems. The

coastal areas had not received adequate protection inspite of their ecological diversity and the contribution to the national economy. Acknowledging this position, the Central Government issued a Notification on 19 February 1991 under the Environment Protection Act 1986 in respect the Coastal Regulation Zone. The CRZ Notification regulates and restricts the activities in the Coastal Regulation Zones. These regulations protect the ecological balance in the coastal area. The CRZ Notification has provided a categorisation of the coastal stretches into CRZ I, II, III and IV and has varying degrees of restrictions.

6. The Supreme Court has recognized and has emphasized the need to protect the coastal zones, through various decisions, such as *Indian Council for Enviro-legal Action vs Union of India*¹, *S. Jagannath vs Union of India*², and *Vaamika Island vs Union of India and Ors.*³. Some of the principles laid down are that the State has a legal obligation to protect the coastal environment. Any development within the Zones must be as per the Notification. Those who seek to construct in such an areas have to demonstrate that the construction will not harm the environment. Such an entity must produce all the relevant material. A failure to disclose the appropriate content and

¹ 1996 (5) SCC 281

² 1997 (2) SCC 87

³ 2013 (2) SCC 760

information will invalidate the grant of sanction.

7. With these objects of the CRZ notification, we now turn to the case at hand.

8. An outline of the events that have occurred before the institution of the W.P. No.333 of 1993 and of its disposal, is necessary. It is as follows.

9. On 7 March 1977, the Government of Goa invited offers for construction of a hotel at Gaspar Dias Beach. The project proponent submitted its proposal on 28 March 1977. The Government of Goa and the project proponent executed a lease on 30 April 1979. The Government of Goa leased an area of 15,666 sq. metres to the lessee at an annual rent of ₹ 43,277.30. (The Lessee Hotel Management is hereafter is referred to as the Hotel). The State Government also acquired more plots for construction of the Hotel.

10. The then Lieutenant Governor of Goa objected to the construction of the Hotel. He pointed out that the development was too close to the Mandovi River. He stated that the Hotel would take away the land required for public recreation. The Captain of Ports wrote to the Chief Town Planner that the construction would be

beyond the highest high tide mark. He apprehended a hindrance to the navigation. The Captain of Ports suggested an undertaking be taken from the Hotel to make the necessary changes.

11. The Government of Goa and the Hotel entered into an agreement for construction of a luxury Hotel. The agreement required the Hotel to follow all the laws, including the ones for the preservation of the ecology and the environment .

12. Sometime around February 1987, the Panjim Draft Outline Development Plan was notified for objections. In this plan, the user in the construction area was shown as Recreational. The Hotel objected and sought that it should be changed to Commercial. The Ecological Development Council of Government of Goa, on 4 March 1987, approved the Hotel project in principle. The approval was subject to change of zone under the Draft Outline Development Plan. The Town and Country Planning Board finalised the Development Plan on 11 January 1990. The Government of Goa constituted the Goa State Committee on Environment. This Committee (GSCE) replaced the earlier Council. GSCE took a review of the decisions of the previous Council.

13. The Ministry of Environment and Forest (MoEF) on 19

February 1991 issued a Notification under the Environment Protection Act 1985. A Coastal Regulation Zone (CRZ) was demarcated for the sea coast and the tidal rivers.

14. The GSCE in principle approved the proposal of the Hotel on 14 June 1991. The Town and Country Planning Board approved a 10 metres wide road along the River Mandovi nearby to the project site. MoEF objected to the decision of the GSCE to approve the Hotel project. MoEF requested that the case is deferred. MoEF sought the details of the project in the interest of environmental management. GSCE rejected the request of MoEF. GSCE stated that the approval is conveyed to the party. It also noted that the site falls within the Coastal Regulation Zone- II (CRZ-II). Panjim Planning Development Authority granted development permission to the Hotel on 19 November 1999. The permissions specified the area as Chalta Nos.14(p), 16(p), 17, 18, 1(p) of P.T. Sheet Nos. 98 and 116 of Miramar. On 20 December 1991, the Panjim Municipal Council issued a construction licence. The Tree Officer, on 29 June 1992, granted permissions for the felling of trees on the plots. Construction Sanad was issued on 24 July 1992.

15. The Hotel started construction sometime in September

1992. There were large-scale protests by the residents of Miramar. The Goa Foundation, the Petitioner, filed a Writ Petition No.333/1993 in public interest in this Court.

16. The Petitioner alleged that the Hotel construction violated the CRZ Notification. It contended that the development was proceeding on the basis of the unlawful permissions. The Petitioner protested that the public access to the Beach was impeded. The Petitioner drew attention to the objections raised by the Lieutenant Governor on 30 January 1984. The LG had pointed out that there was going to be a public outcry if the Hotel was allowed to come up close to water ,destroying a thick grove and blocking public access . The Petitioner also placed on record the protests made by the residents. The Petitioner complained that there was no application of mind while granting permission to cut a large number of trees. It was stated that the construction faced direct tidal effect. The Petitioner prayed for setting aside the sanctions, to restrain any further development, to demolish the construction, restore the area and open up the access to the Beach for the general public.

17. Rule was issued in the Writ Petition on 30 August 1993. Civil Application No.180/1993 for interim relief came up for consideration of the Division Bench . The Division Bench, by order

dated 16 September 1993, rejected the interim relief. The Petitioner filed a Special Leave Petition in the Supreme Court. The Supreme Court dismissed the Petition. The Supreme Court however clarified that any observations made by the Division Bench or by the Supreme Court would not affect the merits of the rival contentions at the time of final hearing , and would not prejudice the stand of the Petitioner.

18. While the Petition was pending, further developments took place. The CRZ notification was amended on 10 August 1994. The CRZ along with the tidal rivers was fixed at 50 metres from the High Tide Line. The Captain of Ports received complaints from the residents of Miramar about the sand excavation by the Hotel. The Captain of Ports inspected the Hotel site. According to the petitioner, the Captain of Ports noticed that the sand dumps blocked the public access to the beach. The MoEF constituted a Committee to examine the complaints of CRZ violations in Goa. The Committee submitted an Interim Site Report to the MoEF on 30 October 1994. According to Petitioner, the report established that the Hotel was abutting the waterfront, it was affected by the tidal action, and there was no adequate area between the sea and the construction. The Petitioner filed an application for the stay of the construction. The Court, in view of the stand of the Government of Goa that the High Tide Line

is 1.5 km. from the site, dismissed the application. The Goa Planning and Development Authority (GPDA) on 27 March 1995 renewed the permissions of the Hotel. The Goa Coastal Zone Management Plan was approved on 27 September 1996. The Hotel site was classified in CRZ-II. Further revision of plans was approved on 1 October 1996. The GPDA imposed a condition that no construction on the west side of the existing building line towards Mandovi River would be made. The application made by Hotel to build a retaining wall along the river bank was sent to the Goa State Committee for Coastal Environment.

19. On 25 July 1997, the Division Bench directed that a location map be drawn. It was directed that the location map should show the disputed project *vis a vis* the existing structure on the bank of River Mandovi such as Yatri Niwas, Youth Hostel, Indoor Stadium, and Kala Academy to examine whether the Hotel site comes towards the seaward side or the landward side. A Surveyor was appointed as a Commissioner. The Commissioner submitted his report on 12 December 1997.

20. The hearing of the Petition was deferred because of the pendency of a challenge in the Apex Court concerning the Coastal Regulation Zone. The Apex Court delivered a Judgment in that case

on 22 September 2014.

21. Writ Petition No.333/1993 was thereafter taken up for hearing. Parties filed their replies and produced documents. The Petitioner, in short, argued as follows: The construction violates the CRZ Notification. The authorities have committed a fraud in the interpretation of the relevant provisions. The authorities have acted with malice in law to grant permissions to the Hotel within the CRZ. There is a collusion between the authorities and the Hotel. Misleading facts are placed on record by filing documents and affidavits. The authorities have falsely claimed that the Hotel is within a distance of 1.5 km. from the High Tide Line. The Hotel has obstructed the access to the Miramar beach. Removal of the sand dunes has degraded the ecologically fragile area. While disposing of the application for interim relief, the Court was misled about the specific CRZ restrictions. The Commissioner's report shows that the swimming pool is hardly 20 metres from HTL. Even the Hotel is at a distance of 30 metres from the River. Though the plans have been approved on the basis that the area is coming under CRZ-II, the proposed road is not sanctioned. There is no approved road towards the seaward side of the Hotel. There is no authorised structure towards the seaward side of the Hotel. Thus the permissions granted

in favour of the Hotel have violated the CRZ notification, the same may be revoked and the Hotel be directed to remove the construction and the obstruction.

22. The Hotel opposed the Petition. Its arguments were as follows: The project was conceived on 30 April 1979 and sanctioned before the Notification of 1991. The Authorities had interpreted that the restriction would not apply to any project beyond 500 metres from the High Tide Line. The Authorities had always taken a stand that the project is not affected by the CRZ Notification. The State Government is the appropriate authority in the matter of granting development permissions. The interpretation of the Authorities which implement the notification needs higher weightage. The State Government was the appropriate authority to issue permissions during the preparation of the Coastal Zone Management Plan to implement the CRZ Notification of 1991. The permission to the Hotel was issued before the amendment in the year 1994. The Petitioner's interpretation was not accepted by the Court while passing the interim order. The Petitioner has not joined the relevant parties and has not challenged the decision in the meeting of 20 November 1991. The conduct of the Petitioner is not bona fide. There are no particulars of the alleged fraud. The interim report of

the MoEF cannot be relied upon. There is an authorised structure between the Hotel and the Mandovi River. The re-validation of plans is correct and proper. All permissions have been properly granted. The Hotel has incurred a significant expenditure.

23. The State Authorities also opposed the Petition. The State, however, did not dispute that the permissions were granted to the Hotel based on the norms of CRZ-II in the CRZ Notification of 1991. The GPDA supported the stand of the State.

24. The Division Bench held that the Petition was not barred by principles of res judicata. The Division Bench also rejected the argument of the Hotel of laches on the part of the Petitioner. The Bench dealt with the applicability of the CRZ Notification of 1991 in extenso. The Division Bench rejected the contention of the Hotel that the permissions were obtained before the CRZ Notification of 1991. The Division Bench took a review of various permissions granted by the Authorities. The Court held that the record showed that the Hotel applied for permissions only after the Notification of 1991. The contention of the Hotel that it did not fall within the ambit of Notification of 1991 was rejected. The Court also did not approve the decision of the Goa State Committee for Environment to maintain the distance of 10 metres from the river bank. It held that it

violated the provisions of the CRZ Notification of 1991. The Division Bench rejected the argument of expenditure holding that the Hotel has taken a calculated risk.

25. In the reply affidavit, the Hotel had averred that the permission dated 29 November 1991 and the clearance by the Goa State Committee for Environment dated 14 June 1991 are based on their interpretation. Their interpretation must be given deference. There is no relaxation in favour of the Hotel. It was averred that the CRZ notifications are not applicable to the projects which are located along the river bank, though subject to tidal effect. In any event, it did not affect the projects which are located within 500 meters from the Arabian Sea. The Division Bench rejected these contentions holding that it was misreading the Notification of 1991. The Bench held that the CRZ Notification of 1991 and the note therein it provides that the restrictions concerning the CRZ Notification of 1991 would also apply to the project in respect of the High Tide Line of the river, subject to the conditions stipulated therein.

26. The Division Bench dealt with the submission that exposition of law by the authorities needs to be given a high degree of weightage. The Court held that an interpretation is not binding if it is erroneous. The Division Bench held that on its plain reading, the

interpretation was not in accordance with the provisions of the Notification and, therefore the question of giving any weightage to such interpretation would not arise. The Bench held that in spite of the provisions of the CRZ Notification of 1991, the Respondent No.3 chose to direct changes in the No Development Zone. The Notification itself provided that until the Coastal Management Plan is approved , the CRZ Notification of 1991 has to be complied with. The MoEF had informed the Respondent No.3 that the Hotel would violate the CRZ Notification of 1991. The Bench observed that the Authorities could not have permitted the Hotel without complying with the CRZ Regulations, as it was within 100 metres from the High Tide Line of the River.

27. The Division Bench held that the observations made by it at the interim stage would not bind the Petitioner at the time of final hearing and all issues were kept open. The Division Bench also noted the Government's stand that the permissions were on the basis that the Hotel is within CRZ-II area.

28. The Bench took note of the decision in the case of *People's Movement for Civic Action through its General Secretary and anr. vs. Goa Coastal Zone Management Authority and ors.*, reported in 2014 (3) Bom CR 12 in respect of another permission

issued by the very same Authority in the year 1992. In the case of a project abutting Zuari river, subject to tidal effect, it was held that a set back of 100 metres of HTL of the river was necessary. The Division Bench observed : *“Thus the stand of the respondent nos. 1 to 4 with regard to the CRZ Notification subverts the norm as provided in the CRZ Notification of 1991.”*

29. The Division Bench then dealt with the contentions of the Petitioner in respect of mala fides and malice. It noted that the specific allegations were not disclosed, nor the officers were made parties. The Division Bench, however, held that it would not make a difference as case Malice in Law was established.

30. The Bench then examined the report of the Chartered Surveyor-the Commissioner appointed by the Court. It observed that the Hotel was shown to be at a distance of about 22.30 metres and 20.50 metres from the river bank. The plan disclosed an authorised structure, a Youth Hostel at a distance of 37.8 metres from the river bank. It observed that a Light House was located at a distance of approximately 18.00 to 20.00 metres from the river bank. The swimming pool was shown very close to the river bank.

31. The Division Bench referred to a decision in the case of

Kisan Mehta and ors. vs. State of Maharashtra and ors., 2000 (4) Mh LJ 708, and emphasized on certain sentences from the paragraph it reproduced. The Division Bench, based on the decision in the case of *Kisan Mehta*, observed that the contention that the retaining wall was an authorised structure in terms of the CRZ Regulations could not be accepted. There was no material to show that a retaining wall existed on the seaward side when the CRZ Notification of 1991 was brought into force. The Court held that an imaginary line could be drawn parallel to the High Tide Line of the river from the existing authorised structure. Any development towards the landward side of such line would not infringe the provisions of the CRZ Notification of 1991. However, any construction on the seaward side of would violate the CRZ Notification of 1991.

32. The Division Bench took a serious note of the different stands taken by the Respondents. The Division Bench concluded that the alleged proposed road depicted in the plan did not satisfy the requirement. The stand of the Authorities that the Hotel was on the landward side of the proposed road was without substance. It observed that from the Commissioner's report, at the most only structure that could be considered to be authorised, is the Light House. The Division Bench observed that based on these findings the

Authorities would have to examine whether the construction from the line would violate the norms of CRZ-II. It held that no consideration should be shown to any person when construction is illegal and unauthorised. There cannot be a judicial tolerance of such illegalities.

33. Thereafter, the Division Bench concluded the discussion, made certain relevant observations and passed the operative order. It is necessary to reproduce paragraphs 34 to 37, which read thus :

“34. Considering the view taken by us, we prima facie find that there is development/ construction activity carried out by the respondent no.7 which may include the swimming pool and the compound wall towards the seaward side of the imaginary line to be drawn from the Light House referred to in the said plan. It is pertinent to note that at para 6 of the affidavit of Mr. E. R. Godinho who was a Member Secretary of the North Goa Planning and Development Authorities he has stated that on 16.06.1997 the respondent no.7 sought development permission for construction of a retaining wall/compound wall around the said property. As such wall was coming along the bank of Mandovi river the matter was referred to the Goa State Committee of Coastal Environment – respondent no.3 herein. Pursuant thereto such wall came to be constructed. The permission granted in the year 1997 is after the Coastal Management Plan was already approved by the Central Government and the compound wall was allowed to be constructed in CRZ II area. In such circumstances,

allowing the construction of such wall without examining whether it comes on the seaward side of an existing authorised structure as existing in 1991 would totally violate the restrictions and norms of the CRZ Notification of 1991.

35. Another aspect to be noted is that as per the affidavit of the Chief Town Planner, the distance from the Bank to the hotel building is shown to be 23 metres. Even in the inspection report submitted by the Court Commissioner, the distance is more or less the same. But, however, as per the plans which were revised in the year 1997, there are structures including swimming pool, retaining walls, etc, which are prima facie situated within the said distance of 23 metres. The permissions to that effect appear to have been granted in the year 1997 based on the plans produced by Shri H.D. Naik, learned Counsel appearing for the respondent No.1. Such permissions, prima facie, did not meet the restrictions imposed by the CRZ Notification of 1991. In such circumstances, we find that the concerned Authorities including the respondent No.3, now the Goa Coastal Zone Management Authority would have to re-examine the constructions put up by the respondent No.7 in the area towards the river side of an imaginary line to be drawn from the Light House, parallel to the High Tide Line, along the river, across the subject land where the hotel project of the respondent No.7 is located. We have no sufficient material on record to clearly identify the High Tide Line at loco to conclusively ascertain whether any building/structure put up by the respondent no.7 is located towards the river side of such line to be drawn from the Light House parallel to the High Tide Line. If

any construction activity is carried out on the river side it would have to be dealt with by the respondent Nos.1 to 4, after hearing the respondent No.7 in accordance with law, as necessary action would have to be taken in case any such structure violates the CRZ Notification of 1991. As such, we find that the concerned authorities namely the respondent nos. 1 to 4 or now GCZMA would have to re-examine whether the swimming pool, the compound wall or any other development/ construction activity carried out by the respondent no.7 is located towards the seaward side of such line drawn parallel to the High Tide Line from the Light House as pointed out herein above and take necessary action accordingly in accordance with law. To that extent, the said sanction dated 29.11.1991 and the subject revisions stand vitiated.

36. Mrs. N. Alvares, learned counsel appearing for the petitioners has also brought to our notice the fact that the respondent no.7 has kept a path to access the beach between the Youth Hostel and the subject hotel project for the benefit of the public. Such access cannot be obstructed and has to remain open to make the beach accessible to the public at large. It was also pointed out that there are some difficulties to access the beach from such path. The respondent no.2 shall as such take necessary measures to make such path accessible to the public in accordance with law.

37. In view of the above, we pass the following :

O R D E R

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.

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.

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.

Rule is made absolute in the above terms.

The petition stands disposed of accordingly with costs.”

Stay of the order was sought for eight weeks and was granted. We have been informed that the challenge was not taken further by the Respondents. The order of the Division Bench has become final.

34. Thereafter, the Authorities prepared a report. This Report was prepared primarily by the surveyors and officers of the Planning Authority. These officers concluded that the construction

was not towards the river side of the Imaginary Line drawn from the Light House parallel to the High Water Line along the river. The report of the Authorities that the directions are complied with was objected to by the Petitioner. Misc. Application 274/2016 was taken out by the Petitioner. Petitioner complained that the Respondents are not following the directions.

35. The Division Bench rejected the Report. The Court observed that the basis taken of High Water Line was not as per the directions issued in the Judgment. The High Tide Line will have to be identified as per the provisions of the Act and the CRZ Notification of 1991. The Bench also observed that it is the task of the GCZMA. Thereafter the Division Bench, by order dated 3 July 2017, granted application for extension of time to comply with the directions.

36. The GCZMA requested the National Centre for Sustainable Coastal Management to draw an imaginary line from the Light House parallel to the High Tide Line. The National Centre for Sustainable Coastal Management (NCSCM) submitted its proposal and indicated the timeline and the costs. This was, however, not taken further.

37. The GCZMA constituted a committee. The site inspection was carried out, stated to be along with the representative of the Petitioner. The report along with the plan was placed before the GCZMA. The Authority in its 154th Meeting held on 1st August 2017, accepted the report and took a decision. GCZMA observed that there is no authentic record of the High Tide Line of the year 1991. It marked the High Tide Line for the year 1991 assuming that there has been continuous erosion on a yearly basis from 1973 to 2017. It calculated the average shift in the High Tide Line in last 43 years. It then calculated the cumulative shift in the High Tide Line 1973 to 1991 i.e for a period of 18 years. It was concluded that no construction of the Hotel is towards the riverside of the imaginary line. It was thus concluded that no action needs to be taken in respect of the Hotel.

38. This conclusion according to the petitioner is a complete eyewash. Petitioner has thus approached this Court by way of this public interest litigation.

39. The Petitioner has prayed to quash and set aside the decision of the GCZMA dated 1 August 2017 to approve the report. It seeks to quash and set aside the Report. It has sought necessary

directions for restoration of the Beach to the public. Directions against the State of Goa are sought to remove the construction in contravention of the directions of the Division Bench .

40. We have heard Ms. Norma Alvares, learned Advocate for the Petitioner, Mr. D. Lawande, learned Advocate General for the Respondents No.1 and 2, and Mr. Rafiq Dada and Mr. Raju Subramaniam, learned Senior Advocates for the the Respondent No.3. We refer to their arguments as the Petitioner, the Authorities and the Hotel.

41. Some positions are settled. The Judgment in WP No.333/1993 has become final and is binding on the parties. The dispute is governed by the CRZ Notification of 1991 and the CRZ-II Zone. The benchmark to test the legality of the Hotel is the High Tide Line.

42. A preliminary objection was raised about the maintainability of the Petition. It was contended that the Petition is filed for execution and enforcement of the Writ of this Court which is not permissible. It was contended that it is contrary to Rule 23 of Chapter XVII of the Appellate Side Rules, 1960. There is no merit in this submission. The Petition is brought in public interest. It is for

the Court to take cognizance of it. Such technical and procedural fetters cannot be placed on the powers of the Constitutional Court to take cognizance of a cause brought before it in public interest. The earlier directions were issued to enforce the Environmental Rule of Law. A complaint is made that the degradation continues. It is nobody's case that the Petitioner has any personal cause or that the order passed benefits the Petitioner personally. The objection raised is more of form than substance and on this ground alone the Petition cannot be rejected.

43. We will now examine the conduct and approach of the Respondents post the directions of the Division Bench dated 29 June 2015.

44. The Authorities prepared two reports to show that there is no CRZ violations by the Hotel. First Report was rejected by the Division Bench. The Second Report has given rise to the Present petition.

45. Though the Division bench rejected the First Report, we refer to it in detail, as shows the manner in which the Authorities are conducting themselves. More particularly in the context of the finding of the Division Bench and the allegations of the Petitioner,

of collusion.

46. After the Division Bench directed that the High Tide Line be identified, an inspection report was prepared. It was prepared by two Surveyors, Head Surveyor, Supervisor, Superintendent of the Directorate of Settlement and Land Records DSLR, one Municipal Engineer, one Chief Scientist from the Goa Coastal Zone Management Authority, the Member Secretaries of the Planning Authority and the Goa Coastal Zone Management Authority. They referred to the order and details of CRZ-II. They used the primary data before 19 February 1991. They observed that before 1991, only the Cadastral Survey Plans of the Directorate of Settlement and Land Records were the primary data which has been accepted by the Authorities. The secondary data they referred to was the report of the Commissioner appointed by the Court, a Chartered Surveyor, and the Valuer. Then they established the two primary ground control points for plotting the parallel line. They concluded that the High Court had held that there is no material available to identify the High Tide Line and proceeded to adopt the High Water Line as the benchmark. A report was prepared accordingly.

47. When this Report was placed before the Division Bench, the Division Bench rejected it observing thus :

“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.”

48. The Division Bench held that the concept of High Water Line was not in consonance with the directions and the law. The State had not involved the Goa Coastal Zone Management Authority. The concept of High Water Line is not in consonance with the Coastal Regulation Zone Notification. This report was on the basis that the Division Bench accepted that there was no data. This team could not have concluded that the Bench itself has acknowledged that there is a lack of data and, therefore, some method would have to be derived. Under what provision the High Water Line was taken as a basis was not specified. The Division Bench accordingly rejected the First Report by order dated 24 October 2016. The order dismissing the first Report and the concept of High Water Line, has not been challenged.

49. Now the Second Report is prepared. The Authorities and the Hotel contend that they have complied with the directions and there is no illegality. We will now proceed to consider whether the Second report can be given any credence.

50. The following team prepared the Second Report. Two Field Surveyors, two Head Surveyors of the Directorate of Settlement and Land Records, one Municipal Engineer, three Expert

Members of the Goa Coastal Zone Management Authority, the Deputy Town Planner, Member Secretary of the North Goa Planning and Development Authority, OSD of the Goa Coastal Zone Management Authority, and the Member Secretary of the Goa Coastal Zone Management Authority The relevant portion of the Report is reproduced for ready reference is as under :

“Report in respect of the compliance to the judgment order dated 29/03/2016 in Writ Petition No.333/93 of the Hon'ble High Court of Bombay at Goa in matter of Goa Foundation v/d NGPDA and others and in order of the Hon'ble High Court dated

I. Background

1. A report prepared by the Member Secretary, GCZMA, Chief Scientist of GCZMA, Officials of the Department of Survey & Land Records, Municipal Engineer and the Member Secretary, in compliance to the Judgment date 29/03/2016 was submitted before the Hon'ble High Court of Bombay at Goa.

2. The Hon'ble High Court of Bombay at Goa vide order dated 24/10/2016 noted that seven member committee was appointed keeping aside the GCZMA has prepared the report. The Hon. High Court therefore directed the GCZMA to demarcate the imaginary line to be drawn from the light house shown in the plan of the court commissioner parallel to the high tide line and to examine whether any of the construction activities carried out by Respondent no.7 comes towards the river side of the imaginary line and thereafter proceed to take

necessary action against the respondent no.7 for restoring such area in accordance to law in terms of the judgment dated 29/06/2016.

3. The Hon'ble High Court of Bombay at Goa in the Judgment dated 29/03/2016 at para 28 of the said judgment has concluded that the only authorized structure as noted on the basis of the Plan prepared by the Court Commissioner in proximity of the subject plot and adjoining thereto is the light house located close to the Youth Hostel.

II. Survey Details

The structure of M/s. Palms Hotels India Limited is located in PT Sheet No.98, Chalta No.18, P.T. Sheet No.98, Chalta no.17, P.T. Sheet No.98, Chalta No.19, P.T. Sheet No.98, Chalta No.14, P.T. Sheet No.116 Chalta no.1 and the light House in the premises of Youth Hostel located in PT Sheet No.98 of Chalta no.13. There is a parcel of land bearing PT Sheet no.79 of Chalta no.1 which is adjoining and abutting towards the river side of PT Sheet No.98 chalta no.18 of M/s. Palms Hotels India Limited and Sheet No.98 of Chalta no.13 of Youth Hostel. There is also a light house situated in PT sheet no.79 of Chalta no.1 near Kala Academy.

The said property of M/s Palm Hotel in bounded by;

Northern Side : PT Sheet no. 98 Chalta no.13 property of Youth Hostel

Southern Side : PT Sheet no. 117 Chalta no.1

Eastern Side : Public Road

Western Side : PT Sheet no.79 Chalta no. 1 followed by river

III. Inspection and Survey

- 1. Site inspections and visits were conducted by the Goa Coastal Zone Management Authority (GCZMA), North Goa Planning and Development Authority (NGPDA), Directorate of Settlement and Land Records (DSLRL), Corporation of City of Panaji and Town and Country Planning Department on 10-02-2017 & 10-07-2017.*
- 2. During the inspection in the survey the cadastral survey plans/records of the DSLR was utilized.*
- 3. During the inspection and survey on 10/07/2017 the representative of the Petitioner Dr. Claude Alvares and Dr. Antonio Mascarenhas stated that the existing retaining wall along the river has to be considered as the high tide line and the same has to be demarcated on the survey map as the high tide line.*
- 4. The Petitioner thereafter stated that imaginary line should be drawn from the light house located in the premises of youth hostel parallel to the HTL in PT Sheet No. 98 of Chalta no. 13 of Youth Hostel and PT Sheet no. 98 Chalta no. 18 of M/s Palms Hotel India Limited and the structure lying beyond the imaginary line so drawn towards the river side should be demolished.*
- 5. During the Inspection and survey, the distance between the retaining wall and the light house present in the Youth Hostel premises was measured as 24.50 meters.*
- 6. The representative of M/s Palms Hotel India Limited objected to the demarcation of the High Tide*

Line as of today based on the existing retaining wall stating that their construction licenses were issued in 1991 and hence the High Tide Line should be demarcated as of 1991. The representative also said that the order of the Hon'ble High Court dated 24/10/2016 states that the HTL has to be demarcated in accordance to the Environment Protection Act, 1986 and CRZ notification 1991.

7. M/s Palms Hotel India has submitted that the Hon'ble High Court in its judgment dated 29/06/2015 observed at Paragraph 35, there is no sufficient material on record to clearly identify the HTL at loco as of 1991. It is the submission of M/s Palms Hotel India that the land mass bearing Chalta No.1 P.T. Sheet No. 79 of City Survey Panaji belonging to the Government of Goa adjoining and in front of the Hotel side even if submerged has to be taken into consideration while plotting HTL as of 1991.

8. There is no authenticated HTL demarcated as of 1991 in the records of the GCZMA and during the period 1991 to 1997 the GSCEE was performing the function of implementation of the CRZ Notification, 1991.

9. There is substantial evidence of enormous erosion and subsequent submergence of land mass which includes the land mass bearing Chalta No 1 P.T. Sheet No. 79 and Chalta No 18 of P.T. Sheet No. 98.

10. The Cadastral Survey Plan of the Directorate of Settlement and Land Records is the only authenticated Government document accepted by any Government

Departments or agencies for granting approval related to development works and for ground validation of properties and land parcels in the State of Goa. These Plans are promulgated and notified by the Government of Goa.

11. In such circumstances the members have relied on the two Ground Control Points established earlier during the survey for plotting of the parallel line. The Light House denoted as Point A and Point A1 is the point drawn perpendicular from the light house to the line of intersection of the land with the water surface, in the Cadastral Plan of Chalta No. 1 of P.T. Sheet No. 79. The said Chalta No. 1 of P.T. Sheet No. 79 is Government land abutting and adjoining the Chalta No. 18 of P.T. Sheet No. 98 of M/s Palms Hotel India Limited towards the riverside which is presently submerged in the water.

12. The boundary of the Chalta No. 1 of P.T. Sheet No. 79 which is abutting the river as shown in the Cadastral Plan marked in Blue denoted as S1, S2, S3, S4, and S5 on the Cadastral Plan annexed herewith has been considered as the High Tide Line as of 1973 i.e when the Directorate of Settlement and land records had conducted Cadastral Survey and promulgation of Records of rights.

13. The existing retaining wall along the bank of river Mandovi has been considered as the High Tide Line as of 2017 and marked in Brown colour. The High Tide Line as demarcated in the Court Commissioner plan along the collapsed retaining wall is marked in Magenta Colour.

14. *Since there is no authentic record of the High Tide Line of the year 1991 the High Tide Line for the year 1991 has been marked in Green Colour on the plan assuming that there has been continuous erosion on yearly basis from 1973 to 2017. The distance between the High Tide Line of 1973 and High Tide Line of 2017 is at Point S1 is 75 meters at S2 it is 60 meters, S3 is 46 meters, S4 is 48 meters and S5 is 12 meters as depicted in the plan attached to this report.*

15. *The average shift in the High Tide Line in last 43 years i.e from 1973 to 2017 is 1.74 meter per year from point S1, 1.4 meter per year from point S2, 1.06 meter per year from point S3, 1.11 meter per year from point S4 and 0.28 meter per year from point S5.*

16. *The cumulative shift in the High Tide Line 1973 to 1991 i.e for a period of 18 years is calculated by multiplying average shift per year into 18 at every point, which is resulting to 31.32 meters at point S1 and depicted as S_1 on the plan, which is resulting to 25.00 meters at point S2 and depicted as S_2 on the plan, which is resulting to 19.00 meters at point S3 and depicted as S_3 on the plan, which is resulting to 19.98 meters at point S4 and depicted as S_4 on the plan and which is resulting to 5.00 meters at point S5 and depicted as S_5 on the plan.*

17. *The High Tide Line of 1991 is thus depicted on the plan by joining S_1, S_2, S_3, S_4 and S_5 marked in green colour.*

18. *An imaginary line marked in Red Colour denoted*

as P_1, P_2, P_3, P_4 and P_5, parallel to the High Tide Line of 1991 as marked in Green Colour from the Light House located in the premises of the Youth Hostel maintaining equidistance of 24.5 meters, considering the light house as the base point was plotted.

19. The imaginary line parallel to the boundary so drawn is extended into the Chalta No.18 of P.T. Sheet No.98 of M/s. Palm Hotels India Ltd. as shown in the cadastral plan annexed.

20. On perusal of the said demarcation of the imaginary line on the Cadastal Plan it is seen that there are no construction activities carried out by the Respondent No.7 in the area beyond the imaginary line towards the riverside.

21. The Respondent No.7 has produced a document obtained from the office of the Water Resources Department, Panaji which shows that the tender for the retaining wall (presently collapsed) was issued in 1978. The said document is annexed herewith as Annexure II. Since this document was produced by the Respondent No.7, the same is mentioned herein.

22. The records from the Department of Survey and Land Records also indicate that the Plot bearing Chalta No.1 of P. T. Sheet No.79 belonging to the Government, which is adjoining and abutting Chalta No.18 of P.T. Sheet No.98 of M/s. Palm Hotels India Ltd extends upto Kala Academy wherein there exists a Light House. The said Light House has also been depicted in the plan submitted by the Court Commissioner. The said Light House is the authorised structure nearest towards the

riverside prior to 1991 located in plot abutting/adjoining the plot of the Respondent No.7 i.e. Bearing Chalta No.18 of P.T. Sheet No.98.

23. The detailed plan in scale 1:2000 depicting the High Tide Line of 1973, 2017, 1991 and imaginary line with respect to the High Tide Line of 1991, Light house in premises of the Youth Hostel, Light House opposite Kala Academy in Chalta No.1 of P.T. Sheet No.79, the hotel building, swimming pool and retaining wall of the respondent No.7, in Chalta No.18 of P.T. Sheet No.98 is annexed herewith as Annexure I.

Official associated in site inspection :

- 1. Shri Sachin Chowdhary, (Field Surveyor, D.S.L.R.)*
- 2. Shri Rajesh Harmalkar (Field Surveyor, D.S.L.R.)*
- 3. Shri Nitin R. Mantri (Head Surveyor, D.S.L.R.)*
- 4. Shri Arunkumar S. Dhale (Head Surveyor, D.S.L.R.)*
- 5. Shri Veeraj G. Naik, Bholnekar, (Municipal Engineer Gr III) Corporation of City of Panaji.*
- 6. Dr. Prabhakar Shirodkar (Expert Member -GCZMA),*
- 7. Shri Audhut J. Bhonsule (Expert Member – GCZMA),*
- 8. Prof. Suhas Godse (Expert Member – GCZMA)*
- 9 Shri R. N. Volvoikar (Dy. Town Planner -TCP, Panaji)*
- 10. Shri Pandita, Member Secretary – NGPDA*
- 11. Shri Sanjeev Joglekar, O.S.D., GCZMA*
- 12. Shri Parag Nagarcekar, Member Secretary - GCZMA”*

51. In the report, it is stated that a field inspection was carried out. The team also refers to the Cadastral Survey Plan of the Directorate of Settlement and Land Records as the only authenticated

government document. After that, the team relied on two ground control points established during the earlier survey. Then it recorded that there is no authentic record of the High Tide Line of 1991 and one had to consider the average shift in the High Tide Line from the year 1973 to 2017 and to draw an imaginary line. Then they calculated the erosion of soil and drew a map stating the ultimate conclusion of this report along with the map is that the Hotel does not breach any provision of Coastal Regulation Zone Notification of 1991.

52. The Report, along with the plan, was placed before the Goa Coastal Zone Management Authority. The Authority in its 154th Meeting held on 1st August 2017, accepted the Report and took a decision. The Authority concluded that :

“14. Since there is no authentic record of the High Tide Line of the year 1991 the High Tide Line for the year 1991 has been marked in Green Colour on the plan assuming that there has been continuous erosion on yearly basis from 1973 to 2017. The distance between the High Tide Line of 1973 and High Tide Line of 2017 is at Point S1 is 75 meters at S2 it is 60 meters, S3 is 46 meters, S4 is 48 meters and S5 is 12 meters as depicted in the plan attached to this report.

15. The average shift in the High Tide Line in last 43 years i.e from 1973 to 2017 is 1.74 meter per year

from point S1, 1.4 meter per year from point S2, 1.06 meter per year from point S3, 1.11 meter per year from point S4 and 0.28 meter per year from point S5.

16. *The cumulative shift in the High Tide Line 1973 to 1991 i.e for a period of 18 years is calculated by multiplying average shift per year into 18 at every point, which is resulting to 31.32 meters at point S1 and depicted as S_1 on the plan, which is resulting to 25.00 meters at point S2 and depicted as S_2 on the plan, which is resulting to 19.00 meters at point S3 and depicted as S_3 on the plan, which is resulting to 19.98 meters at point S4 and depicted as S_4 on the plan and which is resulting to 5.00 meters at point S5 and depicted as S_5 on the plan.*

17. *The High Tide Line of 1991 is thus depicted on the plan by joining S_1, S_2, S_3, S_4 and S_5 marked in green colour.*

18. *An imaginary line marked in Red Colour denoted as P_1, P_2, P_3, P_4 and P_5, parallel to the High Tide Line of 1991 as marked in Green Colour from the Light House located in the premises of the Youth Hostel maintaining equidistance of 24.5 meters, considering the light house as the base point was plotted.*

19. *The imaginary line parallel to the boundary so drawn is extended into the Chalta No.18 of P.T. Sheet No.98 of M/s. Palm Hotels India Ltd. as shown in the cadastral plan annexed.*

On perusal of the said demarcation of the imaginary line on the Cadastal Plan it is seen that there are no

construction activities carried out by the Respondent No.7 in the area beyond the imaginary line towards the riverside.”

53. Thus the gist of the conclusion is this: Since there is no authentic record of the year 1991, the High Tide Line for the year 1991 has been marked assuming that there has been continuous erosion on a yearly basis from 1973 to 2017. The distance between the High Tide Line of 1973 and High Tide Line of 2017 at different points is depicted. The average shift in the High Tide Line in the last 43 years i.e. from 1973 to 2017 has been calculated. The cumulative shift in the High Tide Line 1973 to 1991 i.e. for a period of 18 years is calculated by multiplying average shift per year into 18 at the relevant points. Thus HTL of 1991 is deduced. An imaginary line parallel to the High Tide Line of 1991 is marked from the Light House maintaining equidistance of 24.5 meters. The imaginary line parallel to the boundary is also drawn. It is seen that there are no construction activities carried out by the Hotel in the area beyond the imaginary line towards the riverside.

54. The Authorities and the Hotel contend that there is no authentic data from the year 1991 available and the Division Bench has acknowledged this position. They have argued that the Second

Report is a product of expert input and the Court should give deference to it. The decisions in the case of *Secretary and Curator, Victoria Memorial Hall vs. Howrah Ganatantrik Nagrik Samity and ors.*⁴ and in the case of *Neetu Singh Markam vs. State of Madhya Pradesh and ors.*⁵ were cited by the Respondents to stress upon the fact that the Goa Coastal Zone Management Authority is an expert body and it must be given due deference. It was contended that the allegations of mala fides, without joining those as party respondents, cannot be made. The decision in the case of *E.P. Royappa vs. State of Tamil Nadu and anr*⁶ was cited by the Hotel to contend that the burden of establishing the mala fides has been not been discharged in respect of the Goa Coastal Zone Management Authority, the expert body in the field which has arrived at a certain decision. None of the officers have been joined as parties, nor any mala fides have been attributed.

55. Firstly, we will deal with the fundamental assumption in the Second Report that the High Court also has accepted that authentic data of 1991 is not available and therefore experts had to find a way to ascertain the HTL in the circumstances.

⁴ (2010) 3 SCC 732

⁵ (2014) 4 MP LJ 203

⁶ (1974) 4 SCC 3

56. The State and the Hotel contend that the Division Bench had recognized the absence of the data and, therefore, directed the State to carry out the exercise of drawing the High Tide Line. They rely on the observations of the Division Bench more particularly where the bench has said: “we do not have sufficient material to identify the High Tide Line at loco”. The Petitioner contends that the State and the Hotel withheld the data from the Court and what court meant was that material is not placed *before the Court*, and not that it does not exist.

57. The contention of the Petitioner is correct. The observations of the Division Bench cannot be torn out of context. They will have to be read with other the observations made in the Judgment. We reproduce some of the relevant comments:

“The burden must lie on the developer to establish entitlement before the authority before whom he seeks a sanction. The law imposes an absolute and unconditional obligation upon the developer to make a full, fair and candid disclosure to the sanctioning authority of all the features of the proposed development and to demonstrate that the development will not have a deleterious effect on the environment. The material disclosed to the authority constitutes the basis for the grant of sanction or permission. Consequently, a failure to disclose all the relevant material and information will invalidate the grant of sanction. The provisions such as

CRZ Notification of 1991 are conceived in the public interest, the interest which protects the welfare not merely of the society as it exists, but the society of the morrow....

X

Apart from that the concerned Authorities, while granting the permissions for such constructions, have clearly noted that the project was coming within the CRZ-II area. In such circumstances, the whole exercise by the respondents to take a stand contrary to the express provision of the CRZ Notification of 1991 and assume that the hotel project of the respondent no.7 did not fall within the Coastal Regulation Zone is not at all justified....

X

...In such circumstances, the action by the authorities to permit the hotel project without complying with the restrictions of the CRZ Regulations is not at all justified as the said project was within 100 metres from the High Tide Line of the river.

X

...These aspects, read with the facts as enumerated herein above can be taken note of to examine the legality or the malice in law by the authorities in issuing the concerned sanctions to the respondent no.7.

X

... Thus, we find that the conduct of the concerned authorities of the State Government in complying with the well recognized aims and objects of the Environment (Protection) Act and the CRZ Notification of 1991 are found wanting by acting in breach of such enactments. The whole conduct appears to be to allow a hotel project of the respondent no.7 without examining the norms as

provided in the CRZ Notification of 1991.

x

The conduct of the respondent nos. 1 to 4 and the concerned authorities appears to be aimed solely to enable the respondent no.7 to put up the subject hotel project in the said property without examining the relevant provisions of law. In order to attain such objective, the authorities have indulged in legal stimulation to achieve their goal to allow the hotel project to come up without examining whether the norms of the CRZ II areas have been strictly adhered to. We are accordingly satisfied that the sanctions granted to the respondent no.7 for the hotel project are vitiated by malice in law and colourable exercise of power as the whole exercise was to reach an end different from the one for which the power has been entrusted to the said authorities.

x

Such divergent stand taken by the respondent no.7 would clearly indicate that the respondent no.7 are trying to play a game of hide and seek and did not come in a straight forward manner accepting the legal position and disclosing the requisite material to ascertain whether the provisions of the CRZ Notification of 1991 have been violated by the respondent no.7.

x

The respondent no.7 has failed to make a full, fair and candid disclosure of all the facts to discharge the burden that they were entitled for such sanction.

x

Even along with the affidavit filed by the respondent no.7 no such application nor construction licence have been produced. There are only references to such licence

in the affidavit. Based on such references and documents produced by the petitioners, we have already found that the permissions were granted on the assumption that the subject land was within CRZ II area.

x

As already pointed out herein above, CZMP was not approved by the Central Government at that stage and as such the restrictions as imposed under the CRZ Notification of 1991 had to be complied with and the respondent could not arbitrarily grant a sanction to the respondent no.7 to put up the structures which were contravening to the provisions of the CRZ Notification of 1991.

x

We have to keep in mind that the provisions of the CRZ Notification have been conceived to maintain high public purpose to subserve in protecting the ecology and conserving the environment.

x

The stress was laid by the respondent no.7 to exercise jurisdiction by moulding the relief and avoid any demolition of the hotel project of the respondent no.7. Such discretion cannot be exercised which would encourage illegality or perpetual illegal unauthorised construction.”

58. The Division Bench had stressed on the responsibility of a project proponent to show that its actions are environmentally benign. The Division Bench observed that even the basic permissions in respect of the project were not forthcoming. The Division Bench

had rejected the contention that the CRZ Notification of 1991 did not apply to the Hotel. It had held that the construction has to be tested according to the mandate of the CRZ Notification of 1991. The Division Bench had also rejected the contention that the CRZ Regulations are not applicable to the projects located on the river bank subjected to tidal effect. The Division Bench had observed that there was malice in law. The Division Bench concluded that the conduct of the concerned Authorities was found wanting and it appeared to allow a Hotel project without examining the norms as provided in the CRZ Notification of 1991. The Division Bench held that the sanction granted to the project proponent was vitiated by malice in law and colourable exercise of power.

59. These observations do not show that the Division Bench had any doubt about the existence of the record for ascertaining the High Tide Line. On the other hand, the Bench was dismayed at the conduct of the respondents in withholding and misinterpreting the data. There is no indication whatsoever that the Division Bench had acknowledged and condoned the absence of data from the year 1991. Nor any permission was given by the Bench on that premise to invent new methods. It was not that Division Bench had rejected the charge of the Petitioner that the State and the Hotel had withheld the

data.

60. It was contended on behalf of the Hotel that the Division Bench had itself recorded the existence of the official structure towards the seaward side and, therefore, when it observed that the High Tide Line would have to be drawn, this material was also before the Division Bench. Nothing much turns out on this aspect. While discussing as to what was the material before it, the Division Bench made certain observations regarding the Light House. However, after stating so, the Division Bench again reiterated that the burden was on the Hotel to disclose all the material which would justify the sanction as per law and the Hotel had failed to do so.

61. The Division Bench had, in fact, criticized the Hotel for taking differing stands. At one stage, Hotel had claimed that the Coastal Regulation Zone Notification of 1991 was not applicable. Then it contended that the set-back from the river bank should only be 10 metres. Then it stated that the some remnants in the river be considered as an authorised structure. These differing stands compounded the nonproduction of the critical original applications and permissions. The Hotel had failed to make a full, fair and candid disclosure.

62. With this backdrop, the Division Bench made the observations that it did not have sufficient material on record to identify the High Tide Line at loco. This did not mean that there was no material at all or that it condoned this position. It only meant that there was no material placed before the Court and was withheld.

63. The Petitioner has rightly pointed out that the Division Bench has not used the words 'drawing' the High Tide Line in the operative portion of the order, but *identifying* the High Tide Line. The use of the word '*identifying*' is deliberate. The Division Bench meant that the High Tide Line exists and it was only to be identified in front of the Hotel.

64. This allegation of violation of CRZ notification is not a unique situation that has occurred for the first time in Goa. From the time the Coastal Regulation Zone has come in being, for last more than two decades, the State has been regularly enforcing the notification. National Green Tribunal and the Goa Coastal Zone Management Authority have been constituted. The High Tide Line, a core test for the CRZ, is repeatedly relied upon before the Authorities and the High Court. There are Petitions relating to the CRZ on the board of this Court almost every week. The existence of HTL in Goa was so apparent that it was not necessary for the

Division Bench to state in specific terms that the High Tide Line exists and, therefore, it does not need to be drawn afresh only for the Hotel. The Division Bench, therefore, directed that it be 'identified'.

65. When the Hotel construction commenced, the Petitioner moved the Court immediately in the year 1993. Thereafter, the Petition remained pending until it was disposed of in the year 2015. The issue of CRZ violation by the Hotel was raised in the year 1993 and is pending. Now the Authorities state they find it difficult to ascertain the HTL as of 1991. If the litigation was pending since 1993, the State and the Hotel should have kept the relevant data. Any prudent business entity will preserve the record, more particularly when a Petition challenging its construction is pending. There is no explanation forthcoming.

66. Therefore, when the Division Bench observed that it had no material before it, it was referring to the non-action of the Respondents in presenting the material before the Court, not that there was no material in existence. The interpretation by the Authorities and Hotel to the contrary is perverse and is liable to be rejected. It is nothing but the continuation of the brazen conduct already taken note of by the Division Bench.

67. Now to the second argument of the Respondents that the product of expert input must be given due deference. As a general proposition of law, there can be no dispute about it. Question is whether it can be invoked in the facts of the present case. Further, if the law mandates a particular a yardstick to be used by the experts, the Court is entitled to examine if the yardstick applied is legally permissible. It may be that the exact degree of soil erosion over the years is a matter of expertise, but the Court can undoubtedly ascertain whether the concept of soil erosion itself is contemplated in law. Merely because the report is stated to be prepared by experts, any illegal criterion cannot be pushed through.

68. The High Tide Line has been defined explicitly under the notification governing the Coastal Regulation Zone. The Division Bench has already referred to the concept of Coastal Zone Regulation and the definition, observing thus :

“17. ... The term High Tide Line means “the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that

occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm". Hence, the High Tide Line is the line of intersection of land with the water surface. ...In such circumstances, the High Tide Line will be the line on the land up to where the highest high tide reaches at spring tide."

This the position of the High Tide Line in law as per the Notification is recognized by the Division Bench.

69. In the Second Report, the Authorities are not going by this definition, but by an interpolated line with water line and soil erosion added. Soil erosion is not a criterion used to derive the High Tide Line in Goa or elsewhere. No decision invoking the concept of soil erosion in any case in the State of Goa has been placed before us.

70. The interpolated line mixing the High Water Line data of 1973 with the High Tide Line data of 2017 and working out soil erosion, is a concept alien to the definition of the High Tide Line. One of the foundations for the second report is a High Water Line data of the year 1973. The Division Bench did not accept the concept of High Water Line in the order dated 24 October 2016

when it rejected the first report. Again the High Water Line is brought in.

71. The Petitioner has pointed out that when an inspection was carried out for the preparation of the Second Report a representative of the Petitioner was present. At that time, a visual inspection was carried out, but when the report was submitted, the representative of the Petitioner had not signed the same. The Second Report refers to a site visit, but there is no reference as to who introduced the concept of interpolated line and the concept of soil erosion. There is no specific decision to adopt this methodology. The GCZMA has approved the report, but it does not state that it had given specific directions to prepare the report on the basis of such an interpolated line. If the concept of interpolated line and soil erosion has to be introduced while demarcating the High Tide Line, the same decision will have to be taken uniformly in the State or there must be reasons as to why such a decision is taken. The GCZMA is entrusted with the task of ensuring that the Coastal Regulation Zone notifications are implemented in letter and spirit. It is necessary that the GCZMA should have taken a conscious decision. Even assuming that it is permissible in law to introduce a new concept of measuring the High Tide Line, the report does not disclose any such policy or

a legal decision.

72. The Petitioner is right in contending that an entirely different standard is being adopted for the concerned Hotel. This is not how the Authorities mark the Coastal Regulation Zone in Goa when they deal with the allegations of violation of the Coastal Regulation Zone. The Authorities is under a bounden duty to identify the High Tide Line as it existed in the year 1991. They cannot state that they have no data from the year 1991 and, therefore, they will draw the High Tide Line based on any concept that the Authorities find it convenient. The GCZMA is an Authority under the Notification and is bound by the same. It is not open to its members to create new concepts for drawing the High Tide Line or new criteria of the Coastal Regulation Zone. Even assuming that it is permissible, how that is being done only for few hundred metres in the entire stretch of coastal line, is also not justified.

73. The Second Report has also resulted in an absurd situation. The Petitioner has pointed out that the High Tide Line, as per this report, is now right in the water of the river. This goes against the very concept of the High Tide Line.

74. While submitting the Second Report, again the State has introduced a concept of interpolated High Water Line which is entirely outside the definition of the High Tide Line. How the concept of erosion of river bank over the years and annual change in the location of High Tide Line is legally justified, is not explained. How the year 1973 has any relevance, is not explained. The concept of Coastal Regulation Zone came in the year 1991. Thereafter, the soil erosion from 1991 to 2017, is an entirely alien concept has been taken into consideration. The Division Bench has already commented on the differing stands. Now the High Water Line of 1973 plus soil erosion is a new stand that is taken. Therefore, as far as the Hotel is concerned, the High Tide Line drawn is on an entirely different parameter than the rest of the State. It is nowhere in the directions of the Division Bench to undertake an exercise of this nature. The Division Bench had directed not once, but twice, to identify the High Tide Line as per the definition of the 'High Tide Line' and as per the Coastal Regulation Zone Notification. The State accepted this direction of the Court. The State is not implementing this direction on the ground that the Division Bench itself gave this freedom to draw the line outside the concept of the notification, because there was no data available. This is a perversion of the observations of the Division Bench which had in fact

concluded that the Respondents had withheld data from it.

75. The Authorities and the Hotel have criticized the map-cum-sketch drawn by the Petitioner. It is contended that the map is not signed and such a map cannot be relied upon. There is no scale to the map, there is no legend and it is not explained that what happened to the land between the blue and black line and that the Government Plan is more credible. There is no merit in these submissions. First, if a violation of the Coastal Regulation Zone is brought before the Court, the Authorities, which have all the data, must produce it before the Court to show whether the charge is correct or not. The Authorities have failed to do so. It cannot be contended that the violations do not exist because the map produced by the Petitioner is incorrect. The Petitioner is neither a Surveyor nor an Authority under the Act and Notification. The Petitioner has only taken the data as available and has drawn a sketch in furtherance of its submission. Even if the sketch prepared by the Petitioner is kept aside, it does not mean that a conclusion can be drawn that there is no violation of the Coastal Regulation Zone. The sketch drawn by the Petitioner is merely a visual representation of its argument as to how the matter needs to be looked at.

76. It was contended by the Hotel that the Division Bench

had observed that the Light House which is shown at point 'A' in the plan annexed to the Second Report is only the authorised structure towards water side and since the Hotel is behind the authorised structure, it cannot be held to be illegal. Had the Division Bench concluded the issue as argued, then the Bench would have straight away found that the Hotel was not unauthorized. However, the Division Bench has not done so and instead has made various observations referred to earlier. The Division Bench observed that after the High Tide Line is identified, an imaginary line be drawn, and necessary steps are taken as per law.

77. The Respondents contended, based on the decision of the Division Bench in *Overseas Chinese Cuisine (India) Pvt. Ltd. & another vs. The Municipal Corporation of Greater Bombay & other*⁷, that there are doctrines of Containment and Toleration. Firstly, we are not going beyond what is already concluded by the Division Bench. The State has already made it clear that all permissions were processed on the basis of CRZ II zone. The question now is of the High Tide Line and the legally permissible criterion to identify it.

78. The Hotel contended that in respect of the rivers which

⁷ 2000 (1) Bom.CR 341

are subject to tidal movement, soil erosion will be apparent and the Court should take note of the same for the purpose of the High Tide Line. It was contended that the High Tide Line is never constant and may change in case of rivers. It is not pointed out to us that soil erosion of rivers is a part of the definitions of the Coastal Regulation Zone or the High Tide Line.

79. The Petitioner's conduct and the relief sought were criticised by the Respondents. It was contended that various options placed before the Court by the Petitioner and directions sought are not in consonance with the earlier orders of the Court. It was contended that the interpretations of the map are also incorrect. As stated earlier, we are concerned with the primary facet as to the infringement of the Coastal Regulation Zone Notifications to be tested within the parameters of the Coastal Regulation Zone. That the primary task of the Authorities which they have to perform within the ambit of law.

80. The Respondents have taken us in great detail through the map annexed to the second report to justify the Second report. We have to keep few basic positions in mind lest we get lost in a maze. The Petitioner has brought before us a cause in public interest. We are not experts in identifying the High Tide Line. That is the

work of the Authorities. They have to identify it as per the law and decide whether a particular construction violates the Coastal Regulation Zone. The concept of High Tide Line is uniform and fixed, but the Authorities are making it complex. The First Report contained an impermissible criteria of High Water Line. The Second Report added another impermissible criterion of soil erosion. This is nothing but an attempt to take the enquiry away from ascertaining the truth. The High Tide Line will have to be drawn as per law, and it is not for the Authorities to invent a new set of rules and criteria for a single construction. The Hotel cannot enjoy a special status.

81. The Respondents contended that none of the officers who prepared the Second Report are joined as party Respondents, nor any specific allegation are made to sustain the charge of malafides. There is no merit in this contention. The case is of Malice in Law. The Supreme Court has explained the concept of malice in Law in public law field in the case of *Kalabharati Advertising v. Hemant Vimalnath Narichania*⁸. It is held that 'legal malice' or "malice in law" means something done without lawful excuse. When malice is attributed to the State, it is an act which is taken with an oblique or indirect object. It means the exercise of statutory power for purposes foreign to those for which it is in the law intended. It means

⁸ AIR 2010 SC 3745

a conscious violation of the law with a depraved inclination on the part of the authority, which intent is manifested by its injurious acts. The Division Bench has already noted that the Authorities have made attempts to somehow protect the Hotel. The Bench considered the very same argument and attributed legal malice to the Authorities of the State. The same conduct and intent constituting legal malice has continued by the GCZMA. It was expected that atleast after the Division Bench made the observations, the Respondents-Authorities would act within the bounds of the law and to carry out the exercise as directed. The manner in which the two reports are prepared clearly indicates that the Authorities have made up their mind not to draw the correct High Tide Line as existed in the year 1991 within the parameters of the Coastal Regulation Zone Notification.

82. Assuming for the sake of arguments that the data to draw the line as per the Notification is not available, there could have been another methodology employed in the circumstances. Before the definition of the High Tide Line as understood came into being, a practice was being followed in Goa. This has been explained and acknowledged in the case of *The Goa Foundation and anr. vs. State of Goa and others*⁹. Referred to as the *GTC Industries* case. In this

⁹ 2000 (2) Goa LT 174

case, a question arose regarding an order of the State approving demarcation of the High Tide Line not in consonance with the Coastal Regulation Zone Notification dated 19 February 1991, as amended on 16 August 1994. The Division Bench of this Court had taken note of the practice followed in the State of Goa prior to demarcation of the High Tide Line in the State of Goa. A query was raised with the Chief Town Planning Officer regarding demarcation of the High Tide Line prior to its demarcation by the Survey of India, it was stated that the entire coastal area up to 500 metres from the High Tide Line was prepared as per the Cabinet decision in 1992 and the norms followed by the Town & Country Planning were to measure the High Tide Line from the permanent vegetation line which existed on the landward side of the shore and in absence of the vegetation line on the shore, the boundary of the property abutting the shore was taken as a High Tide Line. It was the procedure which consistently followed for approving the projects by the Government prior to the demarcation of the High Tide Line by the Survey of India in 1991. The Court observed thus :

“.. It is thus clear that as upto 26.7.94 when the Under Secretary (Revenue) wrote to the Chief Town Planner, Govt. of Goa, the State Committee of Coastal Environment and its predecessor Committees was following the High Tide Line being the pioneer/permanent vegetation line which exists on the

landward side of the shore line. Where the pioneer/vegetation line was not existing on the shore, the boundary of the property abutting the shore was taken as the HTL.”

83. This decision of this Court in the case of *GTC Industries* was challenged in the Apex Court and the challenge was disposed of as subsequently, the High Tide Line was demarcated as per the Coastal Regulation Zone 1991 as amended in 1994. However the observation of the Division Bench that it was a practice in the State of Goa in the past to take the High Tide Line by taking it as boundary of the property touching the shore as the High Tide Line, remains as a factual position. It is also not that no data exists to adopt the methodology indicated in the *GTC Industries*. The Chief Town Planner, in the earlier round, had placed on record the distance of the river from the plinth of the Hotel building. The approved plans of the year 1991 will also show where the boundary of the property in question lies and the information supplied by the Chief Town Planner is available. Therefore, there was another method which could have been invoked by default. This also has been completely ignored in the Second report and a third haphazard method is evolved.

84. The Second Report and the decision of the GCZMA cannot be sustained and will have to be set aside.

85. The respondents relied upon the decision of this Court in the case of *Goa Foundation vs. Goa State Coastal Zone Management Authority & Ors.*¹⁰. They contended that the Court, in this case, has held that the scope of judicial review in environmental matters is limited and has made some general observations. The Court in this case has primarily based its decision on the judgment of the Apex Court on the policy matters in the contractual sphere. The Court, however, has not referred to various decisions of the Supreme Court rendered specifically on the environmental issues. Right to clean environment is a fundamental right under Article 21 of the Constitution of India. The Supreme Court has taken an overview of its decisions on the subject in the case of *Karnataka Industrial Areas Development Board v. C. Kenchappa*¹¹. We are bound by the series of the decisions of Supreme Court laying down a vast body of environmental jurisprudence.

86. The Supreme Court in the case of *Indian Council for Enviro-Legal Action vs. Union of India and ors.*,¹² has stressed the

¹⁰ 2001 (4) BomCR 226

¹¹ (2006) 6 SCC 371

¹² (1996) 5 SCC 281

need to enforce the environmental regulations. The Supreme Court has held that the enactment of a law, but tolerating its infringement, is worse than not enacting a law. The tolerance of the breach not only nullifies the legal provisions, but it also encourages further lawlessness. The people, through the Parliament, have promulgated laws to protect the environment and save it for the future generations to ensure a good quality of life. If the laws are not being voluntarily obeyed, then they have to be enforced for larger public good. The Parliament has recognized that violation of the environmental laws adversely affects the quality of life. The non-enforcement results in ecological imbalance and degradation of the environment. These goals set by the Parliament cannot be allowed to be nullified by executive inactions and recalcitrance.

87. Thus it is clear that deliberately a situation of absence of data of 1991 is being created to avoid drawing the High Tide Line. This is not a genuine case of missing data. It is an attempt to create an artificial situation to introduce a convoluted method to suit one particular establishment. The following observations of the Supreme court in *Shanti Sports Club v. Union of India*¹³, aptly apply to the present case:

¹³ (2009) 15 SCC 705

“75. Unfortunately, despite repeated judgments by this Court and the High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans, etc., have received encouragement and support from the State apparatus...

... It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorised constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions.”

88. The burden is on those who seek to construct in the coastal zone to show that their actions are environmentally benign. If the data is not forthcoming, the sequitur is that the project proponent has failed to discharge the burden. Therefore, in the facts of the present case, the absence of data, if any, cannot enure to the benefit of the Hotel, but the position is against it.

89. It is, however, clear that the work of identifying the High Tide Line and the parallel line will have to be carried out in view of the directions of the Division Bench. There is also a need to put an end to the controversy at the earliest and conclusively. However, the

Respondents-Authorities cannot be entrusted this task any further. We have to entrust the task to a competent official outside agency.

90. In the 138th meeting of the Goa Coastal Zone Management Authority held to consider the Second Report, the Authority has referred to the National Centre for Sustainable Coastal Management (NCSCM), Chennai. It appears that the GCZMA had made a request to the NCSCM on 2 January 2017 to carry out the exercise. The NCSCM had submitted its proposal for carrying out the survey and submit a report and had also indicated the time-frame and the costs. The NCSCM had sought time of 120 days. It appears that the GCZMA did not take this proposal further on the ground that there was shortage of time. The GCZMA could have sought for extension of time from the Court if the NCSCM needed further time. No such effort was made. The proposal of the NCSCM was not taken further and the GCZMA, thereafter, carried out the exercise of preparing the Second Report.

91. National Centre for Sustainable Coastal Management, Chennai, Tamil Nadu is an Authority under the Ministry of Environment and Forests. It is established for the purpose of better protection, conservation, rehabilitation, management and policy design of the Coasts. Its function is to promote integrated and

sustainable management of the coastal and the marine areas in India and to advise the Central and the States Governments on policy and scientific matters. The NCSCM is also an authorised agency by the MoEF to demarcate the High Tide Line and Low Tide Line for the purpose of Coastal Regulation Zone. Therefore, the NCSCM is not only the expert body to undertake this task, but it also functions as an agency of the MoEF. In fact, the GCZMA had already proposed the NCSCM to carry out the work of identifying the High Tide Line. As we have stated earlier, we are not prepared to entrust the task of identifying the High Tide Line with the Respondents-Authorities any further. The task, therefore, will have to be entrusted to the NCSCM. Since this situation has been brought about in the circumstances which we have narrated above, the costs of carrying out the exercise payable to the NCSCM shall be borne by the Hotel. The State will have to immediately send the proposal to the NCSCM. The NCSCM has already indicated that it will require about 120 days to carry out the exercise. Since the proposal was already moved by the GCZMA earlier and the NCSCM had shown its willingness, there should not be any impediment for the NCSCM to carry out the exercise as indicated in the decision of the Division Bench dated 29 June 2015.

92. As regards the directions of the access to the beach in question, they have already been given by the Division Bench and, therefore, they must be complied with.

93. In view of the above discussions, we dispose of the Writ Petition by following directions :

(I) The impugned decision of the GCZMA in the meeting dated 1 August 2017 accepting the Second Report and the Second Report filed by the GCZMA, are quashed and set aside;

(II) (a) The Authorities shall, within three weeks from today, approach the National Centre for Sustainable Coastal Management, Chennai in respect of the paragraphs 37(i) of the Judgment and Order dated 29 June 2015 in Writ Petition No.333 of 1993;

(b) The NCSCM is requested to submit an estimate of costs to the Authorities within a period of three weeks from the date of receipt of the proposal from the Authorities

(c) After the estimate of costs is received from the NCSCM, the Authorities will forthwith call upon the Respondent No.3-Hotel to make payment of costs estimated by the NCSCM, directly to the NCSCM, within a period of three weeks.

(d) The NCSCM will carry out the exercise as indicated

in paragraph 37(i) of the Judgment and Order dated 29 June 2015, within in a period of four months thereafter and prepare a report.

(e) It is open for the NCSCM to proceed to carry out the exercise without waiting for the tender of costs by the Respondent No.3-Hotel.

(f) After the exercise is so completed by the NCSCM, the Authorities, based on such conclusions arrived at by the NCSCM will take necessary action against the Respondent No.3-Hotel in respect of an area which is found to be in violation of the CRZ Notification of 1991, within a period of four weeks.

(g) The Authorities and the Respondent No.3 Hotel shall supply all the necessary documents and information to the NCSCM as and when required for the purpose of carrying out the exercise.

(h) Any violation of the above directions both, by the Authorities and the Respondent No.3-Hotel, will be viewed seriously and will be treated as a contempt of the order of this Court.

(i) The above directions shall be read along with the observations made by us in this Judgment.

(III) The Respondents-Authorities shall take necessary steps forthwith to ensure that the beach in question is made accessible to

the general public.

94. The Registry is directed to send a copy of this Judgment to the NCSCM forthwith for information. Liberty is granted to NCSCM to approach this Court if it needs any clarification.

95. Rule is made absolute in the above terms.

96. Though we have disposed of the Petition, it shall be placed on board under the caption 'For Directions' after a period of six months from today only for the purpose of reporting compliance.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.

97. At this stage, the learned Counsel for the Respondent No.3 seeks stay of the implementation of this Order. Considering the facts and circumstances, we are not inclined to stay the operation of Clause (I) and Clause (III) of the Order. However, the directions issued in Clause (II) in respect of carrying out the exercise shall come into force after the period of eight weeks from today.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.