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IN THE HIGH COURT OF BOMBAY AT GOA

PIL WRIT PETITION NO.22 OF 2016

The Goa Foundation,
a Society registered under
the Societies Registration Act, 1960,
through its Secretary, Dr. Claude Alvares,
Address : Room 7, Above Mapusa Clinic,
Mapusa 403507, Goa.
Email id : goafoundation@gmail.com
Tel: 2256479
PAN No.:AAAAG0249C.
Annual Income:Rs.9,20,392/-.

Petitioner.

Versus

1. State of Goa.
Through its Chief Secretary,
Having office at Secretariat, Porvorim,
Goa.
2. The Goa Investment Promotions and Facilitation Board,
Through its CEO,
Having office at Secretariat, Porvorim, Goa.
3. The Goa Coastal Zone Management Authority,
Through its Member Secretary,
Having office at 3rd Floor, Dempo Towers, Panaji, Goa.
4. The Collector (North)
Collectorate (North Goa)
Margao, Goa.

5. The Collector (South)
Collectorate (South Goa)
Margao, Goa.
6. The Chief Town Planner,
Town and Country Planning Department,
Dempo Towers, Patto, Panaji, Goa.
7. The State Pollution Control Board,
through its Member Secretary,
Dempo Towers, 1st Flr, Patto, Panaji, Goa.
8. The Village Panchayat of Morgim
through its Secretary,
Morgim, Pednem, Goa.
9. The Village Panchayat of Sancoale,
through its Secretary,
Sancoale, Mormugao, Goa.
10. The Village Panchayat of Curca-Bambolim,
through its Secretary,
Bambolim, Goa.
11. The Village Panchayat of Deao,
through its Secretary Quepem, Goa. (deleted)
12. The Village Panchayat of Benaullim,
through its Secretary,
Benaullim, Salcete, Goa.
13. The Village Panchayat of Varca,
through its Secretary
Varca, Salcete, Goa.

14. The Village Panchayat of Mandrem,
through its Secretary
Mandrem, Pednem, Goa.
15. M/s Chaksu Properties Pvt. Ltd.
having its office at 3/D-2 Court Chambers,
33, New Marine Lines, Mumbai 400 020.
16. M/s Yacht Heaven Pvt.Ltd.
having its office at Chowgule House,
Mormugao Harbour, Goa 403 803. (deleted)
17. M/s Kargwal Construction Pvt.Ltd.
With office at 105, 1st Flr, Runwal & Omkar Square,
Opp Sion Chunabhatti Signal,
Sion East, Mumbai 400 022.
18. M/s Ace Hotels and Resorts Pvt.
With office at The Fern Beira-Mar Resort,
Opp.Lotus Hermitage, Vasvado, Benaulim,
Salcete, Goa 403 716. (deleted)
19. M/s Niraamaya Retreats Venaulim Goa Pvt.Ltd.
with registered office at 642, 4th Main, 2nd Stage,
Indiranagar, Bengaluru 560 025.
20. M/s Total Composites Pvt. Ltd.
having its office at 37/2, Chinar Park, New Town,
Rajarhat Main Road, Post Hatiara,
Kolkata 700 157.
21. M/s Aswem Beach Resort and Villas Pvt.Ltd.
With office at Sahni Farms,
Bijwasan Road, Kapashera,
New Delhi 110 037. Respondents

Ms. Norma Alvares with Ms. Anamika Gode, Advocates for the Petitioner.

Mr. Deep Shirodkar, AGA for Respondent Nos. 1, 3, 4 and 5.

Mr. Sahil Sardesai, Advocate for Respondent no. 13.

Mr. Abhieshek Sawant with Mr. Pankaj P. Pai Vernekar, Advocates for Respondent no. 15.

Mr. Vledson Braganza, Advocate for Respondent no. 20.

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

Date : 5 March 2018.

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

Rule has already been issued in this Public Interest Writ Petition on 27 September 2017. By consent of the parties, the petition taken up for disposal.

2. The Petitioner-Society has approached this Court in public interest, making a grievance in respect of the approvals granted by Respondent no. 2 - The Goa Investment Promotions and Facilitation Board to various projects. According to the Petitioner, these projects are situated in the Coastal Regulation Zone. The Petitioner has sought a declaration that the In-Principle Approvals granted by the Respondent no. 2-Board to the projects of Respondent nos. 15 to 21 be held as illegal, null and void. Apart from the aspect

of the approvals granted to the private Respondents, the Petitioner also raised various questions regarding the power of Respondent no.2 - Board to grant permission in the Coastal Regulation Zone.

3. We have heard Ms. Alvares, learned counsel for the Petitioner, Mr. Shirodkar, learned Additional Government Advocate for Respondent Nos.1, 3, 4 and 5, Mr. Sardesai, learned counsel for Respondent no.13, Mr. Sawant, learned counsel for Respondent no.15 and Mr. Braganza, learned counsel for Respondent no.20.

4. The main contention of the Petitioner is that Respondent no.2 - Board cannot grant permissions to the projects in the Coastal Regulation Zone, outside the ambit of Section 8 of the Goa Investment Promotion Act, 2014. An affidavit has been filed on behalf of Respondent no.2 - Board by the Chief Executive Officer, wherein communications issued to the private Respondents is placed on record. These communications state that the approvals granted to the Respondents are revoked. In these letters there is a reference to the 18th meeting of Board held on 2 December 2017, wherein the approvals were recalled. Minutes of the Meeting states that after considering the legal position and obtaining the appropriate legal opinion, the Board has come to the conclusion that the projects proposals in CRZ do not fall under the purview of the Goa Investment Promotion Board, in view of restrictions under Section 8

of the Goa Investment Promotion Act, 2014. Therefore, a general decision is taken by the Board.

5. The Board has been constituted under Section 3 of the Act of 2014. The powers, duties and functions of the Board are specified in Section 5 of the Act. Section 8 of the Act, places restrictions on the powers of the Board. It mandates that the Board will not to recommend setting up projects or investment promotion on certain classes of lands. The categories listed under Section 8 of the Act are as under:-

(i) Khazan land and low lying paddy fields except for the purpose of activities as permissible thereon, such as, agriculture, dairy farming and other allied activities;

(ii) Sloppy land with a gradient of more than 25%;

(iii) Forest lands and wild life areas except for the purpose of activities as permissible thereon, such as gaming reserve, sanctuary lodges, eco-tourism, forest tourism, etc;

(iv) Coastal Regulatory Zone areas except wherein the foreshore facilities are required;

(v) Tenanted agricultural land except for agricultural activities carried out by tenant/deemed purchaser.

Explanation – The aforesaid activities shall be permitted subject to the approval by the relevant authorities under the relevant laws.

In the present case, the category (iv) is in question. Section 8 (iv) stipulates that the Board shall not recommend any project in Coastal Regulation Zone areas, except where 'foreshore facilities' are required. The Act of 2014 does not define the term, 'foreshore'.

6. Our attention is drawn to Clause 3 of the Coastal Regulation Zone Notification dated 6th January 2011. Clause 3 lays down the prohibited activities in the Coastal Regulation Zone. An explanation is appended to Clause 3 (i) (a) which defines foreshore facilities as under:-

“3(i)(a) : Prohibited activities within CRZ,- The following are declared as prohibited activities within the CRZ,-

(i) Setting up of new industries and expansion of existing industries except,-

(a) those directly related to waterfront or directly needing foreshore facilities;

Explanation : The expression “foreshore facilities” means those activities permissible under this notification and they require waterfront for their operations such as ports and harbours, jetties, quays, wharves, erosion control measures, breakwaters, pipelines, lighthouses, navigational safety facilities, coastal police stations and the like;

Keeping in mind the object of Regulations, that is, protection of the fragile coastal ecology, they need to be construed accordingly. *Prima facie*, the 'Foreshore facilities' should be the dominant use and not

an ancillary one. However, since the Board has already taken a decision as above, we do not find it necessary to adjudicate this further.

7. We note from the earlier orders passed, that the Respondent nos. 16,17 and 18 were deleted from the array of the parties, upon the request made by the Petitioner and based on the affidavits filed by some of the Respondents. Now, that the Board has taken a general decision, which is referred to above, the Board shall examine the cases of Respondent nos.16, 17 and 18 as well within six weeks from today, after following the due procedure.

8. Public Interest Litigation Writ Petition is disposed of in the above terms.

9. Though, the Public Interest Litigation Writ Petition is disposed of, we direct the Authorities, to place their conclusions regarding the Respondent nos.16, 17 and 18, after giving notice to the learned counsel for the parties appearing in the petition.

10. Rule is made absolute in the above terms. No costs.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.