

IN THE HIGH COURT OF BOMBAY AT GOA

PUBLIC INTEREST LITIGATION WP NO.55 OF 2019

Dr. Joe D'Souza and anr. Petitioner.

V/s.

1. The State of Goa, thr. its
Chief Secretary and 9 ors. Respondents

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

Mr. D. Pangam, Advocate General along with Mr. Deep Shirodkar,
Additional Government Advocate for the respondents no.1, 2, 5 and
10.

Mr. Dattaprasad Lawande and Mr. P. Dangui, Advocates for the
respondent no.3.

Mr. D. Pangam, Advocate General along with Mr. Pravin Faldessai,
Additional Government Advocate for the respondent no.6.

Ms. Sayeli G. Bandodkar, Advocate for the respondent no.7.

Ms. Kalpa Devidas Govenkar, Advocate for the respondent no.8.

**Coram : M. S. SONAK &
NUTAN D. SARDESSAI, JJ.**

Date : 26th February, 2020.

P.C. :

Heard Mr. Nigel Da Costa Frias and Mr. V. Sawant, the learned Counsels for the petitioners, Mr. D. Pangam, Advocate General along with Mr. Deep Shirodkar, Additional Government Advocate for the respondents no.1, 2, 5 and 10, Mr. Dattaprasad Lawande and Mr. P. Dangui, Advocates for the respondent no.3, Mr. D. Pangam, Advocate General along with Mr. Pravin Faldessai, Additional Government Advocate for the respondent no.6, Ms. Sayeli G. Bandodkar, Advocate for the respondent no.7 and Ms. Kalpa Devidas Govenkar, Advocate for the respondent no.8.

2. The petitioner, by instituting this Public Interest Litigation questions the construction of the terminal building in the precincts of the Captain of Ports by demolishing the Old Canopy of COP Jetty, Panaji-Goa.

3. The replies and counters have been filed in this matter. One of the main challenges of the petition is that the GCZMA granted approvals on the basis that the construction was to come up on the landed property. However, at a later point of time, the respondents have submitted that the construction is really coming up within the river and not on the land. It is submitted that this position

was never considered by the GCZMA when its initial approvals were granted as such the construction requires rapid EIA studies which have not been undertaken. The petitioner has raised several contentions in relation to this terminal building as have been set out in the petition.

4. The respondents as noted earlier, have contested each of the objections raised on behalf of the petitioners.

5. We find that the petitioners have placed on record the Report of Site Inspection dated 18.6.2019 at Exh.J, pages 59 to 61 of the paper book. This Report, is signed by Dr. Prabhakar Shirodkar and Eng. Audhoot Bhonsule, who are the experts members of the GCZMA itself. The conclusion and the recommendation in this Report reads as follows:

“Conclusion and Recommendation -

i. The site where the mooring for the piling of the proposed construction of Terminal Building of the CoP has been started is falling within the Mandovi River at Panaji which is a City and a Municipal area of the CCP, so it is a CRZ II area.

ii. There is no Sy. No. to the site and the mooring for piling is being done within the open space of the existing Mini Port Jetty of the CoP in the waterfront area.

iii. The said area is located by the side of the Office of CoP and it is also a designated Mini Port area dated 17/02/2006 vide Official Gazette of the Government of Goa.

iv. The NOC, dated 20.07.2015 was already issued by the GCZMA for the proposed construction of Terminal Building within the said riverine area.

v. At the same time, the NGPDA and TCP say that they do not have any jurisdiction over the area since it does not have a Sy. No.

vi. Also, the GSPCB says that the proposed construction does not attract Water Act and Air Act and so they cannot issue NOC, whereas the NOC could be issued by CCP only for sewerage, water and electricity connections.

vii. Since the proposed construction of Terminal Building of the CoP is a facility meant for its offices and other allied purpose which is falling within the waterfront of CRZ II area, it can be done after obtaining the NOC from GCZMA by carrying out Rapid EIA study.

viii. The respondent CoP/GSIDC says that the Rapid EIA study has been carried out by them.

ix. So, the respondent CoP/GSIDC should be told to submit the Rapid EIA report to GCZMA.

x. Also, the Respondent and the Complainants should be called for a hearing for their say during the Authority meeting for deciding the case.

xi. This may be deliberated in the Authority meeting

for a decision.

Sd/-
(Eng. Audhoot Bhonsule) Sd/-
(Dr. Prabhakar Shiroadkar)”
(Emphasis supplied)

6. In the context of the Report dated 18.06.2019, we made an Order on 21.11.2019, in which the date of the Report is incorrectly referred to as 16th May, 2019. The Order dated 21.11.2019 reads as follows:

“P.C.:

Heard the learned counsel for the parties.

2. *Having perused the report of site inspection dated 16th May, 2019 at Exhibit- J at page 59 of the paper book, we deem it necessary that the Member Secretary of the GCZMA files a response to this petition. In response, the GCZMA to clarify whether the rapid EIA studies are required for a project of this nature and if so, whether, they have been undertaken.*

3. *The affidavit to also clarify whether, at the stage of issue of permission dated 20th July, 2015, there was any material before the GCZMA to suggest that the proposed construction was intended to be undertaken in the river and not on land and whether, this aspect was taken into consideration at that stage.*

4. *In addition to the aforesaid aspect an affidavit to also responded to the other issues raised in this*

petition.

5. The learned Advocate General who appears for the GCZMA states that such affidavit will be filed within two weeks from today. The advance copy of such affidavit to be furnished to the learned counsel appearing for the Petitioner and Respondents.

6. We now post the matter for further consideration on 11th December, 2019.

*Sd/-
C. V. BHADANG, J.*

*Sd/-
M. S. SONAK, J”.*

7. In pursuance of our Order, the Member Secretary of the GCZMA has filed the Affidavit. On perusing the Affidavit, we find that the Member Secretary has attempted to say that the expert members who prepared the Report on 18.06.2019 were in fact not required to go into the issues reflected in the Report or make the conclusion and recommendation as have been made in the Report.

8. The conclusions and the recommendations in the Report dated 18.06.2019 suggest that the agency which is undertaking the GSIDC and the petitioners herein should be called for a hearing by the GCZMA for deciding the matter. The recommendation also suggests that the issues raised by the petitioners should be deliberated and discussed in the meeting by the GCZMA so that a suitable

decision could be taken in the matter. The recommendation is that the parties should be heard in the meeting of the GCZMA and thereafter the GCZMA, as a body, should take a decision in the matter.

9. The issues raised in the petition can be best addressed by the GCZMA as a body. Such issues cannot be addressed on the basis of mere prima facie opinion of the experts and certainly, not on the basis of the opinion of the Member Secretary of the GCZMA. All these are matters which can be best be decided, at least in the first instance, by the GCZMA as a body. To that extent, we agree with the recommendations made by the experts in their Report dated 18.06.2019 that the Project Proponents, the Executing Agency and the petitioners – complainants should be called for an hearing by the GCZMA and the issues raised by them may be deliberated and discussed by the GCZMA.

10. In fact, the learned Advocate General states that the GCZMA is not at all averse to hearing the Project Proponent, the Executing Agency and the petitioners herein and thereafter taking a suitable decision in the matter within four weeks from today.

11. Accordingly, we direct the GCZMA to hear the Project

Proponent, the Executing Agency and the petitioners on all the issues raised by the petitioners in the present petition and thereafter take a suitable decision in the matter. The GCZMA to also address the issue of the necessity or the otherwise of Rapid Environmental Impact Assessment Studies, now that it is suggested that the construction is coming up in the river or in the riverine area and not on the land. In arriving at its decision, the GCZMA, should not be influenced in any manner by the Affidavit of the Member Secretary in this matter. The GCZMA to decide all issues on their own merits and in accordance with law after affording an opportunity of hearing to all parties as aforesaid.

12. The GCZMA to communicate its decision to all parties, including in particular the petitioners herein, within a period of seven days from the date on which such decision is arrived at. If any parties wish to challenge such decision, they are at liberty to do so in accordance with law.

13. Mr. Nigel Da Costa Frias, submits that pending the decision of the GCZMA, the construction of the terminal undertaken by the Captain of Ports through GSIDC, may be halted/stayed.

14. Mr. Nigel Da Costa Frias, has himself submitted that for the last three months there is no construction in progress at the site. The construction, even otherwise is commissioned by the Captain of Ports, which is a Government Department and the same is executed by GSIDC, which is a Government Company. This is a public project. At this stage, we do feel that it would be appropriate to pass any orders on stay. Besides, we have directed the GCZMA to consider all the issues within a period of four weeks from today taking into consideration the urgency expressed by the petitioners. The construction, is presently not going on at the site. If the construction begins, it is always open for the petitioner for the petitioners to approach the GCZMA for appropriate orders in relation to the construction terminal building. At this stage, we can only say that the construction, if undertaken shall be subject to any orders which the GCZMA will make in the matter.

15. We make it clear that we have not examined the merits and demerits of the rival contentions and it is for the GCZMA to examine and to decide upon such contentions in accordance with law and on their own merits within the period indicated.

16. With the aforesaid directions and liberties, this petition is disposed of.

17. All concerned to act on the basis of the authenticated copy of this Order.

*af** NUTAN D. SARDESSAI, J. M. S. SONAK, J.