

IN THE HIGH COURT OF BOMBAY AT GOA

Writ Petition No.111 of 2021

M/s KCT Realcon Pvt. Ltd.
Registered office at Thapar House,
25, Bardbourn Road,
Kolkata- West Bengal,
Through its Authorized Representative
Mr. Sanjeev Mishra, aged 39 years,
R/o B670, DDA Flats,
Bindapur New Delhi.

..... Petitioner

V e r s u s

1. Goa Coastal Zone Management Authority
Through its Member Secretary,
Patto Panaji Goa.
2. Village Panchayat of Agarwada-Chopde,
Through its Secretary,
Office of the V.P Agarwada-Chopdem,
Pernem Goa.
3. The State of Goa,
Through Chief Secretary,
Bardez Goa.
4. The Collector & District Magistrate (North)
Office of the Collector (North),
Collectorate Office, Panaji-Goa.
5. Dy. Collector & SDO of Pernem,
Office of the Dy. Collector & SDO,
Pernem Goa.
6. Goa Foundation,
G-8, St. Britto's Apartments,
Feira Alta, Mapsua Goa 403 507.
7. Mr. Joao Mascarenhas,
H. No.211,
Agarwada, Pernem-Goa-403612.

..... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Mr. J. Karn, Advocate for the Petitioner.

Ms. Sapana Mordekar, Additional Government Advocate for the Respondents No.1,3,4, & 5.

Mr. Ganesh Naik, Advocate for the Respondent No.2.

CORAM: DAMA SESHADRI NAIDU, J.
Date: 6th April 2021.

O R A L O R D E R:

The sixth and the seventh respondents, an Organization and an individual, complained to the first respondent—Goa Coastal Zone Management Authority (GCZMA)—that the petitioner has infringed CRZ Regulations. That infringement relates to its raising structures within the ‘No Development Zone’ (NDZ). Acting on that complaint, GCZMA put the petitioner-company on notice.

2. Put on notice, the petitioner filed its reply. It seems that there were three issues before the GCZMA: (i) illegal widening of the bhand; (ii) blocking of the path; (iii) raising structures in the No Development Zone.

3. To determine whether the structures were being raised within the prohibited area, GCZMA wanted the petitioner to approach National Centre for Sustainable Coastal Management (NCSCM), an expert technical-body at Chennai. In fact, the NCSCM did submit a report, holding that the petitioner had been raising structures within the prohibited zone. Then the GCZMA passed the impugned order, dated 19/1/2020.

4. Aggrieved, the petitioner has filed this Writ Petition.

5. At the outset, Ms. S. Mordekar, the learned Additional Government Advocate for the GCZMA, has raised a preliminary objection: the petitioner has an efficacious alternative remedy for an appeal under section 16 of the Green Tribunal Act.

6. Shri S. D. Lotlikar, the learned Senior Counsel for the petitioner, has submitted that this Court, as well as the Supreme Court, has often ruled that alternative remedy is at best a self-imposed restriction. Even otherwise, if the impugned order is laconic containing no reasons, the aggrieved person's substantial right to appeal gets affected. In other words, that party will have no opportunity to raise his grounds of objection in the face of a non-speaking order. On that count, Shri Lotlikar insists that the alternative remedy under section 16 of the NGT Act is no bar for the petitioner to maintain the Writ Petition.

7. To elaborate, the learned Senior Counsel has drawn my attention to the impugned order and pointed out that it contained a single-sentence rejection. This, in fact, disables the petitioner from maintaining an effective appeal for no reasons are forthcoming in the impugned order to lay any challenge against. To support his contention, Shri Lotlikar has relied on *S. N. Mukherjee v. Union of India*, (1990) 4 SCC 594.

8. Indeed, it is axiomatic to assert that the High Court's aversion to adjudicate a dispute in the face of an efficacious alternative remedy is a self-imposed restriction. That apart, there can be no quarrel about the

proposition that an order devoid of merit offends the principles of natural justice.

9. In *S. N. Mukherjee*, the Supreme Court has subjected the issue of 'reasoned orders' as a facet of natural justice to a comparative jurisprudential analysis. According to it, the object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fair play in action". Keeping in view the expanding horizon of the principles of natural justice, *S. N. Mukherjee* has reckoned that the requirement to record reason can be regarded as one of the principles of natural justice.

10. According to *S. N. Mukherjee*, the requirement of recording reasons would (i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimise chances of arbitrariness in decision-making. That said, in the same breath, *S. N. Mukherjee* observes that the extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy.

11. Here, the order ruled on three counts. The first two went in the petitioner's favour; the third one against. As to the location of the construction, GCZMA wanted an expert's opinion. It did have one from NCSCM. In the end, in deference to that expert opinion, it ruled that the structure was being raised in the prohibited zone.

12. The NCSCM's opinion and the GCZMA's reliance on that opinion may be right or may be wrong. That is a matter of merits. That apart, the

reasoning in support of the decision need not run into pages. Sometimes, even a sentence may suffice. It entirely depends on the nature of the matter being adjudicated. Here the mere location of the property is the matter of dispute. And that was within an expert body's remit.

13. Therefore, I find it difficult to accept the learned Senior Counsel's contention that the order is devoid of any reason. I, nevertheless, hasten to add that this observation shall not affect the petitioner's right to contest the case on all counts before the appellate authority.

14. Indeed, Shri Lotlikar has pointed out that it is only a reconstruction of an existing structure. He also points out that earlier, in a different context though, Government of Goa has refused to rely on NCSCM's expertise. But I reckon the appellate forum has all the expertise to rule on these objections, too.

15. Under these circumstances, without advertng to the merits of the matter, I dispose of the Writ Petition holding that the petitioner has an efficacious alternative remedy.

At any rate, as the petitioner had been pursuing the writ remedy bona fide, the impugned order shall not be given effect to for four weeks from the date this order is uploaded. In the meanwhile, the petitioner may explore its alternative redressal options.

DAMA SESHADRI NAIDU, J.

AP/-

**MARIA
AURA
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