

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 394 OF 2021

Mr. Pedrito Misquitta and another.

...Petitioners.

Versus

State of Goa, four and others.

...Respondents.

Mr. R. Noronha, Advocate *for the Petitioners.*

Mr. D.J. Pangam, Advocate General with Mr. P. Arolkar,
Addl. Govt. Advocate *for the Respondents.*

CORAM : REVATI MOHITE DERE &
MANISH PITALE, JJ.

DATED : 15th November 2021

P.C. :-

1. By this Petition preferred under Articles 226 and 227 of the Constitution, the Petitioners seek the following substantive relief :

“ For a Writ of Mandamus or a Writ in the nature of Mandamus or any appropriate writ, direction, or order quashing and setting aside the Impugned Decision passed by the Respondent No. 2 Ld. Authority in Case No. 3.1 held in its 276th Meeting on 21/10/2021 and 23/10/2021 at 2.30 P.M. rejecting the Application filed by the Petitioner No. 1 on 09/02/2021 for seeking exemption / relaxation to his structure

bearing House No. 234 — A, under Survey No. 44/4 of Revenue Village Candolim in terms of the Letter No. GCZMA / NORTH / 12 / 99 / 243 dated 15/11/2002 issued by the Respondent No. 2 Ld. Authority to Petitioner's neighbour, Smt. Joanita E. Fernandes, the owner of the adjoining plot under Survey No. 44/2-A of Revenue Village Candolim; (Application dated 09/02/2021 is at Exhibit—P Colly)”

2. Learned Counsel for the Petitioners submits that the Respondent No.2-Goa Coastal Zone Management Authority (GCZMA) had permitted one Mrs. Joanita E. Fernandes, the Petitioners' neighbour, an owner of an adjoining plot, being Survey No.44/2A of Candolim Village, to demarcate her plot from 500 metres from the HTZ, whereas the Petitioners were denied the same. He submitted that in 2003, Respondent No.2-GCZMA and the Village Panchayat of Candolim granted permission to the said Mrs. Joanita Fernandes for construction of a residential house in Survey No.44/2-A at Souza Vaddo, Candolim, whereas the Petitioners who are similarly placed, their construction was ordered to be demolished by the Respondent No.2-GCZMA vide Order dated 21/07/2016.

3. Learned Advocate General opposed the petition. He submits that no interference was warranted in the impugned orders passed by the

Respondent No.2-GCZMA. He submitted that the issue raised by the Petitioners in this Petition, had attained finality and that the demolition order dated 21/07/2016, passed by Respondent No.2-GCZMA was maintained by the National Green Tribunal, Principal Bench, New Delhi (NTG) vide order dated 20/10/202. He submitted that even the review application filed by the Petitioners before the NGT was dismissed. Learned Advocate General submitted that the Petitioners had challenged the dismissal orders passed by the NGT before the Apex Court by way of an Appeal and that even the said Appeal was dismissed by the Supreme Court.

4. Perused the papers. On 21/07/2016, Respondent No.2-GCZMA issued directions under Section 5 of the Environment (Protection) Act, 1986, read with Rule 4 of the Environment (Protection) Rules, 1986, to the Petitioners to demolish the G+1 structure bearing House No.234-A, situated in the property at Souza Vaddo, bearing Survey No.44/4 of Village Candolim, Bardez, Goa. Vide the said order, not only were the Petitioners directed to demolish the said structure, but were also directed to restore the land to its original condition within 15 days, failing which the Deputy Collector and S.DO. Bardez, was directed to demolish/remove the said structure, and recover the expenses from the Petitioners, if any, incurred for the said

demolition, as arrears of land revenue. The Chief Electrical Engineer, Electricity Department was also directed to disconnect the power supply connection to the said G+1 structure and the Chief Engineer, Public Works Department (PWD) was also directed to disconnect the water connection to the said G+1 structure.

5. Being aggrieved by the said order dated 21/7/2016 passed by the Respondent No.2-GCZMA, the Petitioners herein filed an appeal before the NGT being Appeal No.46/2016 (WZ). The NGT, vide order dated 20/10/2020, dismissed the said appeal, being devoid of merits.

6. Being aggrieved by the order passed by the NGT, the Petitioners filed a Review Application No.13/2020 in the aforesaid disposed of appeal *i.e.* Appeal No.46/2016 (WZ), pursuant to which, the NGT passed the following order dated 19/01/2021:

“

ORDER

This review application has been filed against the order of this Tribunal dated 20/10/2020 in Appeal no.46/2016 (WZ). The review application in substance seeks rehearing which is not permissible.

Accordingly, the review application is dismissed.”

7. Being aggrieved by the said orders dated 20/10/2020 and 19/1/2021, the Petitioners approached the Supreme Court by filing Civil Appeal Nos. 299-300 of 2021. The Apex Court, vide order dated 8/2/2021, passed the following order :

“ ORDER

Heard the learned Senior Counsel for the applicant.

We do not find any reason to interfere with the impugned orders passed by the National Green Tribunal, Principal Bench, New Delhi.

Accordingly, the appeals are dismissed.

Pending applications stand disposed of.”

8. The principal contention of the Petitioners is that the document of the adjoining land owner was not considered by the NGT, nor by the Apex Court. The said submission cannot be accepted, inasmuch as, the NGT, in its order dated 20/10/2020 in paragraph 7, has observed that the Petitioners had filed an Interlocutory Application No.108/2020 with a prayer that liberty be granted to bring on record additional documents which were said to be relevant and material for deciding the right of the parties. The NGT noted that it is an admitted fact that the said documents were never produced before the respondent No.1 therein in

the proceedings conducted in pursuance of the show cause notice dated 29/2/2016 and that it was only argued that the documents are just and necessary for adjudicating the dispute between the parties as they substantially indicate the rights of the petitioners in the appeal. Paragraph 7 of the said order dated 20/10/2020, reads as under :

“7. The appellant has filed an Interlocutory Application No. 108/2020 with the prayer that vide this application the appellant seeks liberty to bring on record additional documents which are said to be relevant and material for deciding the right of the parties which is a subject matter of the present litigation. It is admitted fact that these documents were never produced before the respondent no. 1 in the proceedings conducted in pursuance of the show cause notice dated 29.02.2016. But it is argued that documents are just necessary for adjudicating the dispute between the parties as they substantially indicate the rights of the appellants in the present appeal. It is alleged that the appellant no. 2 is the wife of the appellant no. 1 and the owner of the property. It is argued that appellant no. 2 had sought a certificate from the village Panchayat of Candolim, Bardez-Goa seeking information and record as to whether the house structure at survey no. 44/4 existed on the old Cadastral Plan and existed prior to the year 1991. The learned counsel appearing for the GCZMA has submitted that any document which was issued by the Authority not competent to issue it that too during the period of litigation cannot be trusted upon and cannot be taken into account. At present, the village Panchayat has no authority to issue any certificate and has no relevance because the matter had been heard and decided by the GCZMA

and at the time of hearing, the appellant was given an opportunity of hearing and to produce the documents. The issuing Authority has no authority to issue it and thus, this paper has no relevance at all. It is further argued that appellant no. 1 under Right to Information Act sought some documents dated 06.02.2020 provided a copy of the old Cadastral Plan bearing no. 1055, 1058 and 1059 and after the perusal a reference can be drawn that the structure was in existence in 1991. It is further argued that in terms of Section 19 of NGT Act, this Tribunal is governed by the principles of natural justice. Principle of natural justice does not mean that the matter can be reopened at any stage and at any time. The appellant has made a request that the matter should be remanded back for further hearing before the GCZMA.”

9. It is thus evident, that the very same ground raised in this Petition, was raised before the NGT, and which was not accepted by the NGT. Learned Counsel for the Petitioners does not dispute that the said ground was also raised before the Apex Court, however, he states that the Apex Court dismissed their appeal and failed to consider the same.

10. In the light of what is stated aforesaid, the submission that the Petitioners' adjoining owner-Joanita Fernandes was granted permission by Respondent No.2-GCZMA, whereas the Petitioners' prayer was not considered, does not hold any water, inasmuch as, the said issue was before the NGT in Appeal and in the Review

Application, however, the same was not accepted. Similarly, even the Apex Court dismissed the Petitioners' Civil Appeal preferred against the said two orders passed by the NGT. Hence, it is not possible for us to reappreciate the said submission, the issue having attained finality.

11. Accordingly, the Petition being sans merit, stands dismissed. There shall be no order as to costs.

MANISH PITALE, J.

REVATI MOHITE DERE, J.

SANTOSH S MHAMAL

 Digitally signed by SANTOSH S MHAMAL
Date: 2021.11.17 10:28:43 +05'30'