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IN THE HIGH COURT OF BOMBAY AT GOA

CONTEMPT PETITION NO. 2 OF 2020

IN

PIL WRIT PETITION NO. 26 OF 2017

WITH

**MISC. CIVIL APPLICATION NOS. 150 OF 2022,
64 OF 2020, 198 OF 2022 AND 2119 OF 2022 (F)**

IN

CONTEMPT PETITION NO. 2 OF 2020

THE GOA FOUNDATION, THR. ITS
SECRETARY, DR. CLAUDE ALVARES ... PETITIONER

VS

PARIMAL RAI, OFFICE OF THE CHIEF
SECRETARY AND 3 ORS. ... RESPONDENTS

Ms. Norma Alvares with Mr. Om D'Costa, Advocates for the
Petitioner/Applicant.

Mr. S.D. Lotlikar, Senior Advocate with Mr. Deep Shirodkar,
Additional Government Advocate for Respondent Nos. 1, 2
and 3 in CP No. 2/2020.

Mr. S.R. Rivankar, Senior Advocate with Mr. Rama Rivankar
and Ms. Nishita Rivankar, Advocates for Respondent No. 3
in MCA No. 150/2022.

Mr. Nitin Sardessai, Senior Advocate with Mr. Ashwin D.
Bhobe, Mr. Jitendra P. Supekar, Mr. Sufiyan Sayed, Mr.
Roger D'Souza, Mr. Shivam Phadte, Mr. Kabir Sabnis and
Ms. Gautami Kamat, Advocates for Respondent No. 4.

CORAM: G.S. KULKARNI &
BHARAT P. DESHPANDE, JJ.

DATED: 30 SEPTEMBER 2022

ORAL ORDER. (per G.S. Kulkarni, J.)

1. This is a Contempt Petition whereby the petitioner has alleged contempt of an order dated 24 August 2018 passed by the co-ordinate Bench of this Court in disposing of PIL Writ Petition No. 26/2017. At the outset, we need to refer to the operative directions of the said order passed by this Court and more particularly, to direction no. 2(f) of which contempt is alleged. The said directions reads thus.

“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 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."

(emphasis added)

2. The public interest litigation in question on which the above directions were made by this Court had some antecedents. The petitioner had earlier approached this Court in Writ Petition No. 333/1993 making a grievance that a hotel named ‘Goa Marriott Resort’ owned by respondent no. 4 (for short “the hotel) located near the Gaspar Dias Beach at Panaji, had breached the Coastal Regulation Zone (CRZ) restrictions. We need not delve in respect of the other details of the said petition, suffice it to state that the said Petition came to be disposed of by the co-ordinate Bench of this Court vide judgment and order dated 29 June 2015, whereby this Court directed the authorities to draw a line parallel to the High Tide Line (HTL) from a light house, a structure nearby. The authorities were to determine whether any construction of the hotel fell towards the river side of this line, after which to take necessary action against the hotel. The State of Goa was directed to take all measures to prevent the erosion of the sand bank and siltation of the river. The hotel was directed to remove the obstructions to the access of the public to the beach. The operative directions of the Court in Writ Petition No. 333/1993 read thus:

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

(i) 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.

(ii) 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.

(iii) 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.

(iv) Rule is made absolute in the above terms.

(v) The petition stands disposed of accordingly with costs.

(emphasis added)

3. On the ground that the above directions as made by the Division Bench were circumvented, the petitioner filed the said second petition (PIL Writ Petition No. 26/2017), in which, the directions as noted in paragraph 1 above were made. By these directions, the authorities were directed to approach the National Centre for Sustainable Coastal Management, Chennai (NCSCM) in respect of paragraph 37(i) of the judgment of the Division Bench

in Writ Petition No. 333/1993 to carry out the exercise as directed in terms of paragraph 37(i) of the said judgment.

4. It so transpired that after the orders were passed in PIL Writ Petition No. 26/2017, the NCSCM in accordance with the directions of this Court prepared a report on the basis of survey and mapping exercise carried out by it to examine whether any construction activity by the said hotel comes to the riverside up to the imaginary line from the lighthouse shown on the plan of the Court Commissioner parallel to the HTL. Such report is dated 10 September 2020. The report in paragraph 7.0 observed thus:

7.0 Observations of NCSCM:

1. As per the results of the survey and mapping exercise carried out by NCSCM, it is seen that the HTL of 1991 demarcated by NCSCM coincides with the remnants of the collapsed retaining/parapet wall. The HTL of 1991 and the remnants seen on the ground of the collapsed retaining wall are depicted in the said map, (Fig-1), along with the existing retaining wall, among other details.

2. As per the enclosed detailed signed map on 1:1000 scale, depicting the imaginary line drawn from the lighthouse shown in the plan of the court commissioner, parallel to the High Tide Line of 1991, the structures (in the hotel Goa Marriott resort project in question) which fall on the river side of the imaginary line are.

Parts of swimming pool, Hut and the existing retaining wall.

3. *The distance between the Light house (depicted in the Court commissioner's report) and the High Tide Line of 1991 is 19 m.*

4. *The imaginary line was drawn at a distance of 19 m from the High Tide Line of 1991, towards the landward side.*

5. *The distance between the western facade of the Youth hostel and the High Tide Line of 1991 is 38m.*

6. *The distance of the Hotel Goa Marriott resort's extreme most projecting sections/towards the river from the High Tide Line are 24m in the north, 34m in the middle and 23m in the south.*

7. ***The structures (in the Hotel Goa Marriott resort project in question) which fall on the river side of the said imaginary line are parts of the swimming pool, hut and the existing retaining wall.***

8. *The project area/the project in question falls under the CRZ II category.*

9. *The distances of the structures (in the Goa Marriott hotel resort project in question) which fall on the said imaginary line (within the 19m buffer) on the river side, from the HTL of 1991, are given below.*

<i>Sl.No.</i>	<i>Points on the structures</i>	<i>Distance from the HTL of 1991</i>
<i>1</i>	<i>Existing Retaining Wall (P1)</i>	<i>7.5 m</i>
<i>2</i>	<i>Hut (P2)</i>	<i>15 m</i>
<i>3</i>	<i>North west corner of swimming pool (P3)</i>	<i>14.0 m</i>
<i>4</i>	<i>Swimming pool middle point facing river side (P4)</i>	<i>16.5 m</i>

5	<i>Swimming pool south west point (P5)</i>	15 m
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(emphasis supplied)

5. Thus, the case of the petitioner is that in the said report, as part of the swimming pool, hut, and the existing retaining wall were categorised as structures, which falls on the river side of the imaginary line, hence, such observations were directly hit by the directions of the Division Bench as contained in clause (II)(f) of paragraph 93 as noted above, and qua these structures the authorities were required to take necessary action of demolition against the hotel. It is the petitioner's case that since the NCSCM had so concluded, it was incumbent for the "Authorities" based on such a conclusion to take necessary action against the hotel in respect of an area, which according to the petitioner was found to be in violation of CRZ notification of 1991 within a period of four weeks. In other words, the petitioner contends that the part of the swimming pool, hut, and the existing retaining wall was required to be demolished within four weeks from the NCSCM making such a report and an action having not being taken in respect of these structures, the authorities are in contempt of the directions as contained in paragraph 93(II)(f) of order dated 24 August 2018 (supra). It is for such reason, the present contempt petition was filed.

6. It appears that after the report was made, action was taken insofar as the part of the hut and the swimming pool are concerned as it is stated that they were removed on 16 March 2020 and 8 May 2020 respectively. The learned Counsel for the petitioner would not dispute this position. Thus, the only issue that has been canvassed and falls for consideration is as to whether there is any intentional breach of the orders passed by this Court, concerning the existing retaining wall. Such issue, in the context of contempt powers, whether be exercised against the respondents who are arrayed as contemnors has been the subject matter of a contest between the petitioner and the respondents.

7. Before we embark on the submissions as made by the learned Counsel for the parties, we note as to who are arrayed to be the contemnors. Respondent no. 1 is arrayed in his capacity as the “Chief Secretary” of the State of Goa. Respondent no. 2 is the “Secretary of Environment”. Respondent no. 3 is the “Member Secretary” of the Goa Coastal Zone Management Authority (for short, GCZMA). It needs to be noted that the Secretary Environment was not a party in the writ petition. By an amendment, respondent no. 4–hotel was impleaded as a party to this contempt petition.

8. As noted above the retaining wall being maintained and not removed by the authorities is contended to be the breach of the orders passed by this Court.

9. The learned Counsel for the petitioner would submit that the non-removal of the existing retaining wall is an action amounting to contempt on the part of the officials-respondents being directly in breach of the directions as contained in paragraph 93(II)(f) of the orders passed by the Division Bench (*supra*). It is contended by the petitioner that once the NCSCM has categorised the retaining wall to be an offending structure, there was no question of the authority not taking any action to demolish the retaining wall. It is her contention that the direction is required to be considered as it stands and there is no scope for any other inference to be made, in regard to the said directions so as not to take any action or resort to further decision making on the issue of the retaining wall. The learned Counsel for the petitioner has contended that direction 93(II)(f) as made by the Division Bench while disposing of PIL Writ Petition No. 26/2017, cannot be read with or influenced by any other orders or observations/directions made by the Division Bench. It is for such reason the Court needs to initiate contempt action against the respondents for having intentionally

disobeyed the clear mandate of the directions of the Court as contained in paragraph 93(II)(f). It is her submission that in fact, the orders in question passed by this Court are further amplified when the Court observed in paragraph 93(II)(h) that, any violation of the said directions by the authorities was to be viewed seriously and will be treated as ‘Contemnors’ of the orders of this Court. The order being self operative, this is a clear case where this Court needs to take action against the respondents for having intentionally breached the directions of this Court in not removing the retaining wall.

10. As a notice before admission was issued, the respondents have appeared. Also reply affidavits on behalf of the respondents have been placed on record. The official respondents which include the Chief Secretary, State of Goa, Secretary of Environment, and Member Secretary of the Goa Coastal Zone Management Authority (GCZMA) in one voice have contended that there is not a remotest breach of the orders of this Court by any of these authorities. They say so on affidavit expressing their unconditional respect and regard to the orders of this Court. Similar is the stand of the hotel, which is raised on behalf of respondent no. 4 in the present Petition.

11. Mr. Lotlikar, learned Senior Counsel for the Chief Secretary, State of Goa as also, for the State would submit that the judgment dated 24 August 2018 was necessarily required to be read with judgment dated 29 June 2015 passed by the Division Bench in Writ Petition No. 333/1993. He has drawn our attention to the following paragraphs of the affidavit as filed by respondent no. 1– Chief Secretary to contend that the decision to retain the wall has been taken after hearing all the parties and after calling for expert opinion based on concrete technical materials, more particularly, considering the position of the river along the concerned lands of respondent no. 4 (the hotel). We need to note such contentions of the Chief Secretary in said paragraphs, which read thus.

10. I say that to prevent the erosion of the bank and siltation of river Mandovi along the land of the Respondent Hotel, for which purpose the State of Goa was enjoined to take necessary steps, the Authority decided that the retaining wall could be allowed to continue subject to certain conditions. I say that the GCZMA is an Authority constituted in terms of the powers conferred under the Environment (Protection) Act, 1996. The Authority is an expert body appointed to deal with issues relating to the Coastal Regulation Zone. I say that the Authority has various powers and has to deal with environmental issues relating to the Coastal Regulation Zone which may be referred to it by the Government. The Authority also has to identify coastal areas highly vulnerable to erosion or

degradation and to take appropriate measures for such areas.

13. I say that the Authority thereafter again consulted the Water Resources Department and recorded the statement of the Chief Engineer of the Department. The WRD also gave a power point presentation to the Authority. I say that the Authority, after considering all the issues and the directions issued by this Hon'ble Court, passed the Order dated 16.3.2021. I say that since existence of the retaining wall is critical, even if the existing one is demolished, the new wall will have to be constructed at that very place to avoid erosion and siltation at the expense of the Government.

14. As regards the third issue about the access being blocked, a report was called for from the Water Resources Department, vide letter dated 06.02.2020 issued by the Authority. The WRD responded by a letter dated 12.02.2020 pointing out that an inspection was held and it was found that the access connected to the public road leading to the beach was clear of obstruction and was about 100 metres in length and 5 metres in width near the hotel. Photographs were also supplied which are a part of the letter, which is enclosed along with the affidavit dated 13.02.2020 filed by the Member Secretary.

16. I, however, submit that in the event this Hon'ble Court comes to the conclusion that the retaining wall is liable to be demolished, notwithstanding what has been stated hereinabove, I shall ensure that the same is carried out as per the directions of the Court.

12. Mr. Lotlikar has also drawn our attention to the petitioner's rejoinder affidavit to contend that the said affidavit, does not in the

remotest manner question the decision making process much less, to contend that such decision was in intentional disobedience of the Court's order dated 24 August 2018. Mr. Lotlikar has also drawn our attention to paragraphs 18 and 21 of the affidavit dated 13 February 2020 filed on behalf of Shri Johnson Fernandes, Member Secretary of GCZMA in regard to the issue of soil erosion as considered by the GCZMA, which is directly relevant to the conservation of the retaining wall. We need to note the said paragraphs, which read thus:

“18. I say that as regards the retaining wall, the same is linked with soil erosion and the decision has to be taken based on the Report of the Water Resources Department, which is the specialized agency dealing with matters relating to soil erosion. I say that this is all the more necessary in view of the fact that the State was directed to take all measures to prevent the erosion of the bank and siltation of the river Mandovi along the land of the private respondent.

21. As regards the anti erosion measures and the retaining wall, the WRD has submitted a letter pointing out that inspection was held on 11.02.2020 along with Scientist Shri V.B. Sharma of Central Water and Power Research Station, Khadakwasla, Pune, a premiere institute of Ministry of Jal Shakti, Department of Water Resources, River Development and Ganga Rejuvenation of the Government of India to examine the impact of demolition of the retaining wall and that Shri Sharma had submitted a preliminary report observing that the exiting wall is able to protect the river bank from the two forces exerted by high river

currents and wave impact. It is further observed that the two forces may cause erosion in the vicinity of the hotel area if the wall is demolished. The letter has also stated that the report observed that the final findings on the effect of demolition can be provided after carrying out detailed studies based on field observation like local bathymetry in the river, sediment size of bed material, suspension sediments concentration, etc.”

13. Our attention is also drawn to the additional affidavit filed by Shri Dasharath M. Redkar, Member Secretary of the GCZMA dated 17 March 2021, wherein the deponent has expressed the concern that if the retaining wall was to be removed it would cause irreparable damage to the shoreline resulting in eastward shifting of the river and causing damage to sea erosion. The relevant paragraphs of the said affidavit read thus:

6. I say that the GCZMA in the earlier affidavit had pointed out that it may not be possible to interfere with the retaining wall which exists on site until appropriate measures are explored and finalized to ensure compliance with the direction to prevent erosion more particularly because of the fact that the State was directed to take all measures to prevent the erosion of the bank and siltation of the river Mandovi along the land of the private Respondent.

7. I say that after the preliminary report of WRD was received, the GCZMA decided to await the final report of CWPRS. I say that the final report was received along with the letter of the WRD dated 16.9.2020 and was placed before the GCZMA. I say that the Report – “Mathematical Model studies on Hydrodynamics and

sedimentation for demolition of Retaining Wall at Marriott Hotel, Goa” observes that the site is influenced by waves, tide and large river discharges and inter alia concludes that the shifting of left bank would increase the curvature of the river resulting in more erosion at the left bank and further observes that the demolition of the existing wall would result in shifting of channel towards left bank and would further worsen the situation of erosion as angle of oblique current would further increase and the wave forces would be borne by the bank alone. The respondent no.3 craves leave to refer and rely upon the said final report dated 16/09/2020.

8. I say that in view of observation made in the final report was decided to hear the parties and then take a decision in the matter. I say that the GCZMA also consulted the Water Resources Department, which expressed concern over removal of the retaining wall and its impact on anti-erosion works.

9. I say that the GCZMA has observed that the removal of existing retaining wall may cause irreparable damage to the shoreline resulting in eastward shifting of the river and causing damage to sea-erosion prevention measures already taken earlier in the area. I say that in the interest of prevention of erosion of the shoreline and to protect the erosion prevention works put up by WRD, the GCZMA decided to leave the retaining wall in the present condition and maintain it properly. I say that the GCZMA has directed that the Hotel shall not put the area between the retaining wall and the imaginary line drawn parallel to the HTL of 1991 as per the NCSCM Report for any kind of commercial use.

Annexed hereto and marked ANNEXURE C is a copy of the minutes of the 249th meeting of GCZMA held on 18.02.2021.

10. I say that if the retaining wall which exists at site serves the purpose of protecting the shoreline and the properties in the area from soil erosion and the tidal effects, no purpose will be served by demolishing the same and to again construct another wall. On the contrary, it will serve the concern of this Hon'ble court in its judgment dated 29/06/2015, whereby it is directed that the Government should "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". I say that such demolition may cause major damage to the area, which is not in public interest or for that matter the interest of any of the parties.

14. Mr. Lotlikar would thus submit that the retaining wall is in accordance with the decision taken by the GCZMA and would be required to be retained and the same is in complete compliance with the decision taken by this Court in Writ Petition No. 333/1993. It is his submission that the directions of the Division Bench in PIL Writ Petition No. 26/2017 in paragraph 93(II)(f) (supra) directed the NCSCM to make a report and thereafter, considering the observations in the report, a decision was required to be taken and which has rightly been taken by the GCZMA by its order dated 11 March 2021 after hearing the parties. It is his submission that the petitioner is deliberately reading the directions

of the Court as it suits the petitioner as if the NCSCM observations would override the binding orders of the Division Bench dated 29 June 2015 in Writ Petition No. 333/1993. It is his submission that this is not what has even been remotely held by the Division Bench in its subsequent order dated 24 August 2018 in PIL Writ Petition No. 26/2017 wherein in no manner such earlier directions were disturbed. It is his contention that in fact the orders of the Division Bench dated 24 August 2018 in PIL Writ Petition No. 26/2017 were assailed by the hotel before the Supreme Court in SLP (C) No. 33743/2018. The Supreme Court by an order dated 11 January 2019 while dismissing the Special Leave Petition observed that no interference with the order of this Court was required and the petitioner therein (respondent no. 4-hotel) was permitted to urge its defence and take all its points before the authority at the time of consideration of the matter. The said order reads thus:

“Heard learned counsel for the petitioner and perused the relevant material.

We are not inclined to interfere with the order impugned in the special leave petition. The same is, accordingly, dismissed.

As the High Court has merely sought a report from the National Centre for Sustainable Coastal Management with regard to the High Tide Line, we do not see how the said direction of the High Court could have prejudiced

the petitioner, inasmuch as it will always be open to the petitioner to urge its defence and take all points before the said authority at the time of consideration of the matter."

(emphasis added)

15. It is hence Mr. Lotlikar's submission that even the Supreme Court has observed that respondent no. 4—the hotel could urge its defence and take all points before the authority at the time of consideration of the matter. Thus, according to Mr. Lotlikar, on a cumulative reading of the two orders of the High Court and the order of the Supreme Court, there was no infirmity in the procedure adopted by respondent no. 1 in accepting the expert decision of the GCZMA not to demolish the retaining wall and thus, there is no disobedience whatsoever on the part of respondent no. 1 much less, any intentional disobedience as to the orders passed by this Court.

16. Mr. Lotlikar would next submit that the contention of the petitioner to press this contempt petition is in fact contrary to the orders of the Division Bench dated 29 June 2015 in Writ Petition No. 333/1993 and the orders of the Supreme Court dated 11 January 2019 (supra). It is his submission that no litigant is permitted to argue a case, which is in fact offending the directions

of the High Court and the Supreme Court in the said proceedings. In support of his contentions, Mr. Lotlikar has placed reliance on the decision of the Supreme Court in **Dr. U.N. Bora Vs. Assam Roller Flour Mills Association & Another**¹ and **Indian Airports Employees' Union Vs. Ranjan Chatterjee & Another**².

17. Mr. Rivankar, learned Senior Counsel for the GCZMA-respondent no. 3 at the outset has drawn the Court's attention to the orders passed by the Division Bench of this Court in Writ Petition No. 333/1993 (supra) and more particularly, to the direction no. (ii) namely, *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*. According to Mr. Rivankar, this direction is instantaneously relevant insofar as the petitioner's case of removing the retaining wall is concerned. Mr. Rivankar would submit that the second petition (PIL Writ Petition No. 26/2017) on which the order in question dated 24 August 2018 is passed, was clearly a continuation of the issues as raised in Writ Petition No. 333/1993 decided by the Division Bench by its judgment and order dated 29 June 2015, and relevant to respondent no. 4-hotel, who was a

1 (2022) 1 SCC 101

2 (1999) 2 SCC 537

party in both the proceedings. Thus, Mr. Rivankar would submit that the consequence of the directions of the Division Bench in Writ Petition No. 333/1993 dated 29 June 2015, not only was known to the petitioner, but also, clearly accepted by the petitioner. He submits that these orders were significantly relevant and were need to be subsisting when the Division Bench passed orders on PIL Writ Petition No. 26/2017. It is his submission that the Division Bench in its order dated 29 June 2015 in paragraph 37(ii) having categorically directed that the State of Goa (respondent no. 2 therein) shall take all measures to prevent the erosion of the bank and siltation of river Mandovi along the concerned land of respondent nos. 7 and 9, namely, the hotel. It was thus incumbent for all the authorities to comply with such directions by taking an appropriate decision in accordance with law. It is submitted that accordingly, the GCZMA heard the parties and after taking into consideration the expert material vide order dated 11 March 2021 has taken a decision considering the provisions of the Environment Protection Act and the Rules framed thereunder that the proceedings in respect of the retaining wall would stand discharged in terms of the decision taken in the 249th GCZMA meeting held on 18 February 2021. The relevant extracts of the order are required to be noted, which read thus:

“AND WHEREAS, in the meeting 249th GCZMA meeting held on 18/02/2021 it was decided as follows:

“In view of the direction passed by the Hon'ble High Court by Judgment dated 29/6/2015 in Paragraph 37 (ii) with respect to the measures to be taken to prevent the erosion of the bank and siltation of the river Mandovi along the concerned land of the Hotel, this Authority has sought for a Report from the WRD. The WRD has consulted an expert agency of the Union Ministry of Jalshakti, Government of India, namely Central Water and Power Research Station (CWPRS), Ministry of Jal Shakti, Government of India, Pune which possesses technical expertise in the field of coastal protection and specialises in conducting physical and mathematical model studies.

This Authority considered the Expert Report dated 10/09/2020 received from the Central Water and Power Research Station (CWPRS), Ministry of Jal Shakti, Government of India, Pune being ‘Mathematical Model Studies on Hydrodynamics and Sedimentation for Demolition of Retaining Wall at Marriott Hotel, Goa submitted through the WRD. The report in conclusion states as follows:

- The high river discharges and wave and oblique flow towards left bank due to land outcrop at Reis Magos fort site (right bank side) play major important roles in erosion of bank in the vicinity of Marriott hotel.*
- Shifting of left bank would increase the curvature of river resulting in more erosion at the left bank.*
- The demolition of existing wall would result in shifting of channel towards left bank and this would further worsen the situation of erosion as angle of oblique current would further increase and the wave forces would be borne by bank alone.*

The Authority consulted the Water Resources Department to clarify on the issue of retaining wall as per the abovementioned report. The Chief Engineer, Water Resources Department expressed serious concern over impact of removal of retaining wall on anti-erosion works in the vicinity viz at Youth Hostel, Sports Complex etc and cautioned the Authority on shifting of the retaining wall.

The CRZ Regulations also provide for “prohibition of land reclamation, bunding, disturbing the natural course of sea water with similar obstructions except those required for control of coastal erosion” and....

Considering the spirit of the directions of Hon'ble Bombay High Court at Goa, CRZ Regulations, reports of the expert body and the facts on the ground, the Authority observes that the removal of existing retaining wall may cause irreparable damage to the shoreline resulting in eastward shifting of the river and causing damage to sea-erosion prevention measures taken by the Water Resources Department, Govt. of Goa in the vicinity viz at Youth hostel, Campal Stadium, Bhagwan Mahavir Garden etc as has been observed by looking at old collapsed retaining wall of 1978 built by the Water Resource Department in front of the existing retaining wall under question. Therefore, in the interest of prevention of erosion of the shoreline and to protect the erosion prevention works put up by the Water Resources Department, Govt of Goa in the immediate vicinity of the structures, the Authority decides that the retaining wall should be left in the present condition and should be properly maintained.

The Authority directs that the Hotel shall not put the area between the retaining wall and the imaginary line drawn parallel to the HTL of 1991 as per the NCSCM

Report for any kind of commercial use. As a measure to clearly delineate this area, the Hotel shall erect bio-fencing at the imaginary line under the supervision of experts of the GCZMA.

The matter stands disposed.”

Now therefore, the GCZMA in exercise of the powers conferred under Section 5 of the Environment (Protection) Act, 1986 (Central Act 29 of 1986) read with sub-rule (3) (a) of Rule 4 of the Environment (Protection) Rules 1986, and read with power vested with the GCZMA vide Order S.O. 3975 (E) dated 31/10/2019 issued by the Ministry of Environment & Forests, Government of India, hereby discharges proceedings in respect of retaining wall in property Hotel Goa Marriott Resort c/o V.M Salgaocar Corporation Pvt. Ltd, Salgaocar Centre, E 4, Murgaon Estate, Off Airport Road, Chicalim, Goa in terms of decision taken 249th GCZMA meeting held on 18/02/2021.

a) Further, Hotel Goa Marriott Resort c/o V.M. Salgaocar Corporation Pvt. Ltd, Salgaocar Centre, E 4, Murgaon Estate, Off Airport Road, Chicalim, Goa shall not put the area between the retaining wall and the imaginary line drawn parallel to the HTL of 1991 as per the NCSCM Report for any kind of commercial use.

b) As a measure to clearly delineate this area, the Hotel shall erect bio-fencing at the imaginary line under the supervision of experts of the GCZMA in terms of decision taken 249th GCZMA meeting held on 18/02/2021.

The proceedings are disposed off accordingly.

(emphasis added)

18. Mr. Rivankar submits that such decision taken by the GCZMA is fully in consonance with the directions of the Division Bench in its order dated 29 June 2015 passed in Writ Petition No. 333/1993 as noted by us here-before. Mr. Rivankar would also submit that in no manner the said directions referred in PIL Writ Petition No. 26/2017 were upset by the Supreme Court. It is his contention that in the clear facts of the case, both the orders were required to be read in conjunction and it cannot be the position that the authority would act in the manner complying with the order dated 24 August 2018 passed in PIL Writ Petition No. 26/2017 and at the same time, violate the directions as to the measures to prevent erosion of the bank and siltation of river Mandovi along the concerned land of respondent no. 4 being the prior directions issued in Writ Petition No. 333/1993. Accordingly, his contention is that the contempt petition on the face of it, is misconceived and untenable and in fact, it is an abuse of the process of the Court. He would submit that the contempt petition would thus deserve to be dismissed.

19. Mr. Sardesai, learned Senior Counsel for respondent no. 4 in supporting the contentions as urged on behalf of Mr. Lotlikar and Mr. Rivankar would submit that the contentions of the

petitioner of any contempt being committed by the respondents are not well founded. Mr. Sardesai would submit that the GCZMA after following proper procedure has taken a lawful decision dated 11 March 2021 and decided not to disturb the retaining wall and more particularly, which is in compliance of the directions of the Division Bench in Writ Petition No. 333/1993, when the Court had expressed a concern in regard to the measures to be taken by the State Government to protect the erosion of the bank and siltation of river Mandovi along the lands of the hotel. It is contended that such decision of the GCZMA is a reasoned decision which has taken into consideration every possible aspect including the environmental concern, as also the expert report in that regard, to come to a conclusion that there is no violation of the CRZ notification of 1991 so that the retaining wall needs to be disturbed. His contention is that the CRZ notification dated 19 February 1991 in paragraph 2(viii) clearly protects bunding for control of coastal erosion as also referred by the GCZMA, hence, to have a retaining wall is not a prohibited activity as contained in paragraph 2 of such notification. It would be relevant to note paragraph 2(viii) of the 1991 CRZ notification, which reads thus:

2. Prohibited Activities.

The following activities are declared as prohibited within the Coastal Regulation Zone, namely:

...

(viii) land reclamation, bunding or disturbing the natural course of sea water with similar obstructions, except those required for control of coastal erosion and maintenance or clearing of waterway, channels and ports and for prevention of sandbars and also except for tidal regulators, storm water drains and structures for prevention of salinity ingress and for sweet water recharge."

(emphasis added)

It is thus Mr. Sardesai's submission that it is not well founded for the petitioner to allege any intentional breach of the orders passed by this Court. It is hence submitted that the Petition be dismissed.

20. On the above conspectus, we have heard the learned Counsel for the parties and with their assistance we have perused the record.

21. We may at the outset observe that there is no manner of doubt that the petitioner's two proceedings, namely, Writ Petition No. 333/1993 decided by the Division Bench by its judgment and order dated 29 June 2015 and the second PIL Writ Petition No. 26/2017 decided by the Division Bench by its judgment and order dated 24 August 2018, were intricately connected. Both these

proceedings concerned the grievances of the petitioner qua the structures of respondent no. 4 (the hotel) whether were offending the CRZ Regulations. Thus, both the said judgments are required to be read in conjunction. In fact what we observe is that the directions in the first order dated 29 June 2015 have a direct bearing on the subsequent order dated 24 August 2018 on the second petition. It clearly appears that the petitioner was also not oblivious to this position. In fact, this is a categorical stand on behalf of the respondents and more particularly, in paragraph 7 of the affidavit filed by the Chief Secretary, which is not denied by the petitioner in the rejoinder affidavit much less, any specific denial. If this be so, there is a legal consequence which occurs by virtue of the directions as contained in the first order dated 29 June 2015 as noted above in regard to the erosion of the bank and siltation of the river Mandovi along the lands of respondent no. 4 becoming enforceable. These directions of the Court being binding on the respondents, the petitioner cannot assert to the contrary and contend that such directions in the said order have become redundant. In any event, as noted above the said directions in no manner whatsoever, even remotely were disturbed by the order dated 24 August 2018 as passed by the Division Bench in the PIL in question (i.e. PIL Writ Petition No. 26/2017). The petitioner also

does not argue so. On a query on this position, we have been informed by the learned Counsel for the petitioner that only the orders dated 24 August 2018 are to be seen, as there is an intentional breach of the directions contained in paragraph 93(II) (f) by non-removal of the retaining wall amounting to contempt of Court.

22. We are afraid to accept such contention for more than one reason. As noted by us above, and which is clearly to the knowledge of the petitioner that after the report of the NCSCM, the GCZMA had issued a show cause notice to respondent no. 4, on which all the parties including the petitioner were heard, and the observation of the NCSCM qua the hut and the part of the swimming pool was implemented as these structures were removed. Thus, a compliance of the direction of this Court qua these structures was attained.

23. However, insofar as the retaining wall is concerned, there is in fact, no quarrel, although, sought to be unwarrantedly created by the petitioner. The retaining wall was a matter of concern in the light of the specific directions of the Division Bench in the first order dated 29 June 2015 when it directed the State of Goa, on protection of the land along the concerned land of respondent no.

4 (the hotel) so as to prevent erosion and siltation. The petitioner was not only well aware but conscious that this obligation is required to be complied by the State of Goa being a specific direction of the Division Bench in its order dated 29 June 2015. This apart, the GCZMA invited the parties for a hearing on this issue. The petitioner was also called upon to participate, however, the petitioner appears to have only and only asserted non compliance of the observations of the NCSCM by the State of Goa and the GCZMA wanted to consider the ill effects of removal of the wall considering the peculiar position of the Mandovi river and the concern caused due to the river currents causing erosion and siltation, which was imminently to be avoided. In fact, it would bring about a damage if such erosion was not to be avoided.

24. As noted above, the GCZMA called for an opinion of the WRD (Water Resources Department), which was deliberated upon in several meetings held between the parties. A technical report of the Central Water and Power Research Station (CWPRS) was invited. Such scientific report observed thus:

“The scientific report has recorded that “the site is influenced by waves, tide and large river discharges and eaves play an important role in erosion of bank in the vicinity of Marriott hotel. This stretch is prone to erosion. Other major cause of erosion at the left bank is bending of river which is result of a large land outcrop

towards Reis Magos Fort site (right bank site) and flow gets deviated towards the left bank, which can also be correlated with the number of protective/anti-erosion works implemented by the state since 1978 all along the left bank. The river has the tendency to move towards left bank due to sharp bend in the upstream. This oblique flow along with high river discharge combined with severe wave condition is the worst scenario for the bank near Marriot hotel. The demolition of wall would result in shifting of channel towards left bank and this would further worsen the situation as angle of oblique current would further increase. The peak currents near the Marriott hotel wall are of the order of 0.9 m/s. In addition to this, breaking and non-breaking waves exert huge thrust on the wall. After shifting the wall, the whole force would be borne by the bank resulting into further erosion. The distance of pillar of Marriott hall hardly remains at about 5m. The distance between imaginary line and wall footing would further be less. Shifting of left bank would not help in improving the hydraulic conditions in the river instead it may further worsen the situation as it will increase the curvature of bend in this region."

25. The said report of CWPRS concludes as under:

- *The high river discharges and wave and oblique flow towards left bank due to land outcrop at Reis Magos fort site (right bank side) play major important roles in erosion of bank in the vicinity of Marriott hotel.*
- *Shifting of left bank would increase the curvature of river resulting in more erosion at the left bank.*

- *The demolition of existing wall would result in shifting of channel towards left bank and this would further worsen the situation of erosion as angle of oblique current would further increase and the wave forces would be borne by bank alone.*

26. The GCZMA after hearing the parties including the petitioner passed an order dated 11 March 2021, as noted above deciding to retain the wall. It is however pertinent to note as to what was the stand of the petitioner before the GCZMA in the light of so much of technical and expert material was before the GCZMA on the need to have a retaining bund/wall along concerned land of respondent no. 4 (the hotel). The petitioner's stand as recorded in the GCZMA's order dated 11 March 2021 reads thus:

"15. Goa Foundation, the Complainant, argued earlier at length on the matter and in the written submission stated that that there are two directions to be complied by this Authority in compliance to the judgment passed by the Hon'ble High Court of Bombay at Goa vide order dated 29/06/2015 in WP No.333/1993 contained in paragraph 37 direction No.2 and 3 which pertains to prevention erosion of bank and siltation of river Mandovi and to take measures to provide access to the beach. Complainant further argument is that the direction No.2 & 3 of the Hon'ble High Court in the judgment dated 29/06/2015 pertains to State of Goa and not to the GCZMA and GCZMA cannot decide upon the same. The Directions issued in order dated 24/08/2018 passed in PIL WP 26/0217 by the Hon'ble

High Court are to be complied by the GCZMA. The report called by the GCZMA from WRD with regards to retaining wall through outsource from CWPRS, Pune is entirely unwarranted. The retaining wall has been identified as violation of CRZ notification and had to be removed. The Hon'ble High Court had directed the Authority to demolish all the offending structures.

27. Further, most importantly, the decision of the GCZMA dated 11 March 2021 has not been assailed by the petitioner in any proceedings.

28. It is thus clear that the petitioner had no other stand except to confine its submission on the said order dated 24 August 2018 passed by this Court being binding on the State of Goa and not the GCZMA. According to the petitioner, hence, the GCZMA undertaking the exercise to find out whether the wall should be removed was unwarranted. This is also the contention in the present petition. Such contention of the petitioner to say the least is thoroughly misconceived as it overlooks that after the report of the NCSCM was received, the State of Goa had certainly raised a concern before the GCZMA in regard to the retaining wall, considering the directions of the Division Bench dated 29 June 2015 in Writ Petition No. 333/1993; and rightly so, as the retaining wall fell within the CRZ regulations on which only the GCZMA had an authority to consider any such issue and not the

State Government. A fair procedure was followed by the GCZMA to determine such issue which is clear from the detailed order dated 11 March 2021, by which the GCZMA has come to the conclusion that it is necessary to retain the wall to prevent soil erosion and siltation. Thus, such a decision to prevent damage to the environment as taken by the GCZMA cannot be a matter of any agitation by the petitioner who is stated to be canvassing an interest to protect the environment.

29. On the above backdrop, we may candidly observe that, we are somehow, aghast to note the grounds as set out in the Petition in alleging an action to be taken against the respondents, as serious as contempt of Court, not only against high ranking officials of the State Government but also private respondents. It would not require any authority to observe that the contempt jurisdiction of the Court is a serious jurisdiction and if it is to be invoked it has to be invoked in a responsible manner, more particularly when the respondents as arrayed to the present contempt petition are such high ranking officials discharging their public duties. A responsible litigant who invokes such jurisdiction, it is his/her first and foremost obligation to see that the Government machinery, as well as the Government officials, are not dragged into unwarranted proceedings, much less in contempt

proceedings. It cannot be that the high ranking Government officials are threatened by the sword of contempt proceedings, by any litigant, and without examining the core issue as to whether there is any intentional disobedience of the Court's orders.

30. We see that in the present proceedings the petitioner has invoked the contempt jurisdiction of this Court in an extremely casual nay reckless manner. We may observe that at the midst of the proceedings, we pointed out, such aspect of the matter to the learned Counsel for the petitioner. However, the learned Counsel for the petitioner submitted that there is sufficient case made out by the petitioner in pressing for adjudication of these proceedings and initiate contempt action against the respondents. We thus need to note the grounds as set out in the Petition alleging contempt, which to our surprise, do not unfold any case of an intentional disobedience of our orders. The said grounds read thus:

"GROUNDS

32. The petitioner is therefore approaching this Hon'ble Court under its contempt jurisdiction on the following grounds among others.

A. The original directions given in the original judgment dated 29.6.2015 required action to be taken within a period of six months. This is after 22 years of the petition being filed and being heard by this Hon'ble High Court.

After 6 months there was still no compliance with the directions of this Hon'ble Court by any of the authorities. The petitioner therefore filed an application to draw the attention of this Hon'ble Court to the matter, and even filed an earlier contempt petition.

B. The authorities ganged up together to frustrate the carrying out of this High Court's order and manipulated and submitted a compliance report (the first report) which showed/located the HTL in the river (and not on land, as required by the CRZ notification). This was challenged by the petitioner and the court, indicating its displeasure, set aside the report and directed a fresh report to be done.

C. A second time, the same cabal of officers brazenly plotted to ensure that the interest of the hotel would continue to be protected and succeeded in manufacturing another report (the second report) which again cast the HTL in the river. Naturally, the second report also came to the conclusion that no demolition was required.

D. The Court set aside the second report and directed the NCSCM to demarcate the HTL in terms of the original order of this High Court in W.P. No. 333/1993, but not before another year had passed.

E. No action was taken pursuant to NCSCM report. Instead the GCZMA now issued a show cause notice to the respondents inviting them to object. The opportunity was quickly seized and the hotel owners filed two detailed representations and were preparing for more.

F. The pattern of obstruction is clearly established in the conduct of the GCZMA in filing the first report and then filing the second report and then obstructing the

implementation of the third report by ensuring further delays in implementation of this Court's directions.

G. The Resp. Nos. 1 & 2 were directed and duty bound to implement the directions of this Hon'ble Court as head of the administration and the environment department respectively. The office of the Resp. No. 1 was a respondent in the first writ petition and the subsequent writ petition. For reasons best known to him, the present incumbent has decided that he and his administration will not comply with the orders of this Hon'ble Court. Petitioner has therefore no other option but to move this contempt petition since contempt has occurred in more than abundant fashion as shown in the facts related in the petition.

31. A bare perusal of the grounds itself ex facie indicates that there is no contempt in the remotest manner, as argued at the Bar. In fact, a vague plea of a contempt would amount to an abuse of the process of law. It cannot be so casual.

32. Be that as it may, at the cost of precious judicial time, we have examined in depth as to whether there is any contempt/any intentional disobedience of the order dated 24 August 2018 passed by this Court. As we have observed in detail in the foregoing paragraphs, it is quite clear that the directions of the Division Bench of this Court in Writ Petition No. 333/1993 dated 29 June 2015 clearly imposed obligation on the State of Goa to take all measures to protect the bank and siltation of river

Mandovi along the concerned land of respondent no. 4 i.e. the hotel. There is no quarrel that the part of the swimming pool has been removed to confine the same to the requirements of the location as also, the hut has been removed. However, as far as the retaining wall is concerned, we find that a decision in that regard was certainly required to be taken considering the observations of NCSCM, and in view of the clear directions of the Division Bench in Writ Petition No. 333/1993 in its order dated dated 29 June 2015. Accordingly, the GCZMA had undertaken such an exercise wherein the report of the NCSCM was considered. As observed, the State of Goa is not the authority to take a decision in regard to the said directions of this Court. Parties were heard including the petitioner and a decision dated 11 March 2021 was taken, which in our opinion, is completely in consonance with the directions of the Division Bench in Writ Petition No. 333/1993.

33. Ms. Alvares, learned Counsel for the petitioner relied on the decision of the Supreme Court in **T.N. Godavarman Thirumulpad Vs. Ashok Khot & Another**³. There can be no quarrel on the observations of the Court in the celebrated decision. However, we are unable to appreciate as to how this decision would be applicable, in the facts and circumstances of the present case,

wherein the Court has emphasized the need to protect the environment by virtue of the directions as made by the Court in the first petition. Certainly in the present facts, erosion of the soil and siltation are environmental aspects, which were required to be safeguarded as observed by the GCZMA.

34. In the context of the Court's contempt jurisdiction, Mr. Lotlikar's reliance on the decision in **Dr. U.N. Bora's** case (supra) is well founded as the Supreme Court has clearly observed that the contempt jurisdiction is a powerful weapon in the hands of the Courts of law, but that by itself operates as a string of caution and unless, otherwise satisfied beyond reasonable doubt, it would neither be fair nor reasonable for the law Courts to exercise jurisdiction under the Act. It was observed that the contempt proceedings are quasi criminal in nature, and therefore, standard of proof required in these proceedings is beyond reasonable doubt. It was observed that it would rather be hazardous to impose sentence for contempt on the authorities in exercise of the contempt jurisdiction on mere probabilities. These observations were made referring to the earlier decision in **Hukum Chand Deswal Vs. Satish Raj Deswal**⁴ and **Ram Kishan Vs. Tarun Bajaj**⁵. It

⁴ (2021) 13 SCC 166

⁵ (2014) 16 SCC 204

was also next observed that in order to punish a contemnor, it has to be established that disobedience of the order is “wilful”. The word “wilful” introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. It was observed that “wilful” means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom and it excludes casual, accidental, *bona fide* or unintentional acts or genuine inability. It was thus observed that wilful acts do not encompass involuntarily or negligent actions and the act has to be done with a “bad purpose or without justifiable excuse or stubbornly, obstinately or perversely”. The Court observed that wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently and it does not include any act done negligently or involuntarily. Thus, necessarily there being a requirement of action with evil motive on the part of the contemnor, even if there is a disobedience of an order, such disobedience if is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. These principles were certainly required to be borne in mind by

the petitioner in invoking the contempt jurisdiction of this Court in the present proceedings and vociferously pressing the petition.

35. The learned Counsel for the respondents are correct in contending that the directions of this Court in PIL Writ Petition No. 26/2017 dated 24 August 2018 in the facts of the case could not be read *dehors* the prior directions vide order dated 29 June 2015 in Writ Petition No. 333/1993 and in fact, the GCZMA has observed that the demolition of the wall would worsen the situation and hence for this purpose, it was found appropriate not to demolish the retaining wall as it would cause serious erosion as observed in the said order of the GCZMA and as rightly pointed out by the respondents. The remedy of the petitioner was to assail the decision of the GCZMA dated 11 March 2021 and certainly not to prosecute the present contempt petition.

36. Thus, we find no case whatsoever has been made out for proceeding against the respondents to entertain the contempt petition, accordingly, we dismiss this contempt petition. However, as we find ourselves persuaded to hold that this contempt petition is an abuse of the process of law, we cannot dismiss the contempt petition simpliciter, but it has to be dismissed with costs.

Accordingly, the contempt petition is dismissed with costs of Rs.50,000/-.

37. The petitioner shall deposit the costs of Rs.50,000/- with the Goa State Legal Services Authority within two weeks from the date on which copy of this order is made available. Ordered accordingly.

38. In view of the dismissal of the Contempt Petition, Miscellaneous Civil Application Nos. 150/2022, 64/2020, 198/2022 and 2119/2022 (F), do not survive and as such, stand disposed of.

BHARAT P. DESHPANDE, J.

G.S. KULKARNI, J.

VAIGANKAR
ESHA SAINATH

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