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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 120 OF 2009

Mormugao Port Authority (formerly known as Mormugao Port Trust), a body constituted under the Major Port Authorities Act, 2021, having its office at Headland, Sada-Goa.

... PETITIONER

VS

1. The Goa Coastal Zone Management Authority, through its Member Secretary, having its office opposite Saligao Seminary, Saligao, Bardez-Goa.

2. Mormugao Municipal Council, through its Chief Officer, Municipal Building, Vasco-da-Gama, Goa.

3. The Deputy Collector, Mormugao Taluka having his office at Municipal Building, Vasco-da-Gama, Goa.

4. Goa State Rehabilitation Board, through its Member Secretary, Shram Shakti Bhavan, Patto, Panaji-Goa.

5. Union of India, Through its Secretary, Ministry of Environment & Forests, IA Division, New-Delhi.

6. State of Goa, through the Chief Secretary, having office at Porvorim-Goa.

... RESPONDENTS

Mr. Yogesh V. Nadkarni with Mr. Sanket Kamat, Advocates for the Petitioner.

Mr. Pravin N. Faldessai, Additional Government Advocate for Respondent Nos. 1 and 3.

Mr. S.D. Padiyar with Mr. P. Shirodkar, Advocates for Respondent No. 2.

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

DATED: 13 OCTOBER 2022

ORAL JUDGMENT: (per G.S. Kulkarni, J.)

1. This Petition, which is of the year 2009, was filed praying for the following reliefs:

(i) For a writ of Mandamus or a writ in the nature of Mandamus or direction or order commanding the Respondents to perform their statutory obligations under the Environment Protection Act, 1986, Environment Protection Rules, 1986, CRZ Notification dated 19/2/1991 as amended/modified from time to time, as also the Coastal Zone Management Plan of Goa as approved by the Central Government by its letter dated 27th September, 1996 (EXHIBIT A) and the Goa Municipalities Act, 1968 and Rules made thereunder regulating development and constructions within their jurisdiction;

(ii) Further that by way of a consequential relief, command the Respondents to rehabilitate the CRZ

violators at Vasco Bay, Mundvel towards the east of Alparquerius hill and Vaddem in 23,553 m² of land at Adarshnagar acquired for rehabilitations of persons affected due to construction of Four Lane Highway by MPT and Others, according to the scheme formulated by the Port and Ministry of Housing and Urban Poverty Alleviation, Government of India, New Delhi within a period of one year.

(iii) That pending hearing and final disposal of this Petition, this Hon'ble Court be pleased to direct the Respondents to strictly ensure that no further structures are erected within 100 meters of the CRZ III area along the River Zuari; and

(iv) For such other and further reliefs as this Hon'ble Court deems fit and proper in the facts and circumstances of the case.

2. Subsequently, by an order dated 5 July 2011 passed on Miscellaneous Civil Application No. 608/2011, the petitioner was permitted to amend the prayer clause, which reads thus:

“(i)(a) For a declaration that the portion of the area along the river Zuari at Vasco and Vaddem Bays which falls within the jurisdiction of Mormugao Port Trust and municipal limits of Mormugao Municipal Council and shown in pink in the map at Exhibit B to the Petition, falls within the CRZ III Zone as per the Coastal Regulation Zone Notification, 1991.”

3. By an order dated 5 September 2011, a co-ordinate Bench of this Court had issued Rule on this Petition.

4. At the outset Mr. Nadkarni, learned Counsel for the petitioner has pointed out that prayer clause (i)(a) is not being pressed.

5. The learned Counsel for the petitioner drawing the Court's attention to a recent affidavit dated 9 March 2021 of Mr. Rajan Naik, Law Officer (Grade I) of the petitioner would contend that a Memorandum of Understanding (MoU) was executed between the petitioner and the Government of Goa, *inter alia* on the issue of rehabilitation and encroachment. A copy of the MoU is annexed at Exhibit-A to the affidavit, in which, the parties in supersession of an earlier MoU entered between the parties in the year 1988, agreed for a mechanism to lay down a road map for the speedy and smooth construction of the Khariwada Fishing Jetty in Vasco Bay, for speedy clearance of MPT lands in Vasco Bay and rehabilitation of the encroachers and unauthorized structures etc. as set out in paragraph 2 of the said MoU.

6. Mr. Nadkarni has drawn our attention to paragraphs 4, 6 and 7 of the said MoU as also to the objective of the MoU as

contained in Article 1, the scope of the MoU in Article 2 and to the fact that the MoU contains a whole mechanism on the issues as set out in Article 3. The responsibilities of the petitioner are set out in Article 3.1; the responsibilities of the State of Goa in Article 3.2.1 and the responsibilities of the Goa Fishing Boat Owners Association (GFBOA) in Article 3.3. Article 3.5 provides for joint responsibilities of the parties. Article 4 provides for term, effectiveness and validity of the MoU. Article 5 provides for general conditions and Article 6 provides for governing law and settlement of disputes etc. We find that the MoU comprehensively provides for a complete scheme, touching the subject matter of the present dispute.

7. Considering these subsequent developments, we are of the opinion that in view of such MoU as entered between the parties, further adjudication of the Petition is not called for and the parties should be left to proceed to achieve as to what has been agreed between them under the MoU and as may be permissible in law. Since the issues as raised in the present proceedings are pending for quite sometime, we direct the parties including the State Government to take effective steps, as expeditiously as possible so

that all the issues under the MoU stand resolved. All contentions of the parties are expressly kept open.

8. Rule accordingly stands discharged. No costs.

BHARAT P. DESHPANDE, J.

G.S. KULKARNI, J.

Corrected as per speaking to the minutes of order dated 24 November 2022

VAIGANKAR
ESHA SAINATH

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VAIGANKAR ESHA SAINATH
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