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IN THE HIGH COURT OF BOMBAY AT GOA

PIL WRIT PETITION NO. 40 OF 2019

THE GOA FOUNDATION, THR. ITS
SECRETARY, DR. CLAUDE ALVARES, ... PETITIONER
VS
TOWN AND COUNTRY PLANNING
DEPT., THR. CHIEF TOWN PLANNER,
PANAJI AND OTHERS, ... RESPONDENTS

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

Mr. Devidas Pangam, Advocate General with Ms. Maria
Correia, Additional Government Advocate for Respondent
Nos. 1, 3 and 4.

Mr. M. D'Souza, Advocate for Respondent No. 2.

Mr. S. Jagtiani, Senior Advocate with Mr. M. Khan, Mr.
Jitendra P. Jupekar, Mr. Sufiyan Sayed and Mr. R. D'Souza,
Advocates for Respondent No. 8.

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

DATED: 14 OCTOBER 2022

P.C.:

1. This is a Petition filed in public interest, whereby, the
challenge as mounted, is to the legality of the structures belonging

to respondent no. 8, situated at Bambolim in Goa being used as a hotel. It is a matter of record that this is a third proceeding, which is brought to this Court by the petitioner, raising such grievances in respect of the construction of the hotel structures by respondent no. 8, *inter alia* on the ground of violation of the Coastal Zone Regulation norms. The last round of the proceedings was in Writ Petition Nos. 403/2007 and 659/2010, which fell for consideration before a Division Bench of this Court (Roshan Dalvi and F.M. Reis, JJ. as the Hon'ble Judges then were), which came to be decided on 26 February 2014, however, speaking through different judgments. As the decision was a split decision, the proceedings were referred to a third Judge [U.V. Bakre, J. (as His Lordship then was)], who rendered his decision on 20 January 2015 agreeing with the view taken by F.M. Reis J. In paragraph 15 of this judgment, His Lordship has agreed with the orders passed by F.M. Reis J. in paragraph 80 of his judgment. It would be necessary to extract paragraphs 80 and 81 of the orders passed by F.M. Reis, J., which is relevant for the issues as raised in the present proceedings, which read thus:

“80. The grievance of the petitioners with regard to the running of the hotel activity in the disputed structure would be re-examined by the GCZMA after the Town and Country Planning and the Village Panachayat authorities consider the legality of the constuction put up by the

private respondents in the said area between 50 to 100 metres from the High Tide Line in the light of the observations made hereinabove in accordance with law.

81. In view of the above, Rule stands disposed of in above terms. The Writ Petitions stand disposed of accordingly."

2. Thus, as per the majority view of this Court (F.M. Reis, J. and U.V. Bakre, J.), the grievance of the petitioner in regard to the hotel activity of respondent no. 8 in the disputed structures was directed to be re-examined by the Goa Coastal Zone Management Authority (GCZMA), Town & Country Planning (TCP) Department and the Village Panchayat Authorities, so as to consider the legality of the construction put up by respondent no. 8 in the area between 50 to 100 metres from the High Tide Line (HTL) in the light of the observations made by the Court and in accordance with law.

3. It is on such premise that the present Petition has been filed in public interest making the following prayers:

"(a) For an order directing respondents 1-4 to demolish all the constructions erected by Respondent Nos. 6-8 in the area between 50 to 100 metres of the HTL;

(b) For an order directing respondents to restore the area to its original condition;

(c) For an order directing the respondent authorities to levy further exemplary and punitive damages for operating a resort without environment clearance and

in violation of the provisions of the Town and Country Planning Act.”

4. The Petition was permitted to be amended by an order dated 25 January 2021, whereby, an additional prayer came to be incorporated being clause a.(i), which reads thus:

“a.(i) For an order quashing the Technical Clearance order under Ref. No. DE/5453/Bam/TCP/19/2222 dated 13.12.2019 and any other consequential permissions issued thereafter.”

5. On the above backdrop, the proceedings have appeared before the Court today.

6. The GCZMA is represented by Mr. Pangam, learned Advocate General, who appears along with Ms. Correia, learned Additional Government Advocate, who has placed on record a reply affidavit.

7. We have heard Ms. Norma Alvares, learned Counsel for the petitioner, Mr. Pangam, learned Advocate General and Mr. Jagtiani, learned Senior Advocate along with Mr. Khan for respondent no. 8.

8. On a perusal of the proceedings, we note that the grievance of the petitioner as made before us that the GCZMA has not taken

a decision in compliance of the orders passed by this Court in Writ Petition Nos. 403/2007 and 659/2010 appears to be not well founded, as we find that the TCP Department had taken up the issue for consideration in compliance of the said orders passed by the Division Bench of this Court. A note to that effect is placed at Exhibit-U at page 675 of the Petition. What is found in the said detailed note is that it pertains to the construction of respondent no. 8, which forms part of the decision taken by the TCP Department. As per the directions of this Court, issues were referred by the TCP to the GCZMA as endorsed by the Commissioner/ Secretary (TCP) on 23 September 2019, which was finally approved by the Hon'ble Deputy Chief Minister for TCP on 17 October 2019. Such observations of the TCP having been referred to the GCZMA, the GCZMA has ultimately taken a decision on 23 October 2019, which forms part of the record at page 693. The said decision of the GCZMA reads as under:

"The file alongwith plans of M/s Goan Hotels and Reality Pvt. Ltd, Bambolim-Goa which has been received from the O/o the Ministry of Town and Country Planning, Government of Goa was placed before the Members for deliberations. The members were of the opinion that the Hon'ble Supreme Court of India in its judgment delivered In Indian Council for Enviro-Legal Action dated 18/4/1996 has rendered the notification limiting the HTL to 50 mts. being bad in law and the said judgment also speaks of not affecting the ongoing

constructions or completed constructions pursuant to the plans sanctioned/approved under the amending Notification of 1994. Hence whatever has been constructed by the project proponent as per the sanctioned plans which is in accordance with the Planning Regulations of 1989 as has been certified by the Town and Country Planning Department would stand to get protected. The Hon'ble High Court in WP No. 403/2007 & 659/2010 through its order pronounced on 20/1/2015 has clearly held that the construction. carried out by the project proponent is outside the scope of CRZ Notification to which the Regulation of 1989 are applicable.

It was brought to the notice of the members that a Committee was constituted in this very matter in connection with Writ Petition No. 403/2007 and 659 of 2010 basically comprising of Senior Town Planner (N), 2 Dy. Town Planners (HQ) & Dy. Town Planner Tiswadi who had submitted a report dt. 3/4/2017 and so too a plan was prepared with the help of the DSLR which disclosed that a minor portion of the premises was constructed within the 50 mts of HTL. The Members thus felt that the report and the plan be given to the Town and Country Planning Department so that they may re-verify the same and ascertain if any structure is existing within 50 mts of HTL and if so then the same has to be demolished and the land should be restored to its original position. At page C/408 is the said plan and at C/416 onwards is the report prepared by the Committee. Barring this aspect, if there are any deviations from planning point of view which is beyond the HTL, then it is for the Town and Country Planning Department to take a call.

There is one structure within the area of 50 mts which structure is also 'reflecting in the survey plan promulgated in 1974-75. This indicates that the structure in the NDZ area was a pre-existing structure prior to the 1991 Notification. Since the scope of the Authority has already been determined by the Hon'ble High Court of Bombay at Goa vide judgment pronounced on 20/1/2015, the members felt that the entire plan as prepared by the project proponent be vetted by the Town and Country Planning Department viz-a-viz the report prepared by the Committee and a compliance report to that effect be given to the Hon'ble High Court in PIL WP No. 40/2019 which is listed for hearing on 15/11/2019."

(emphasis added)

9. Accordingly, the proposal having been referred to the GCZMA and the GCZMA having rendered its opinion on 23 October 2019, it was observed that the entire plan as prepared by the project proponent be vetted by the TCP Department viz-a-viz the report prepared by the Committee and a compliance report to that effect be placed before this Court in the present proceedings.

10. We thus note that accordingly, a decision was taken by the TCP Department. It was also taken by the GCZMA, which ultimately culminated into a technical clearance order/NOC dated 13 December 2019 as issued by the TCP Department. The said technical clearance is placed on record as Annexure-12 at page

155. The same has been issued by Mr. Shivprasad Murari, Deputy Town Planner, which refers to what has been observed by us above and the events that took place in decision making process. It also refers to the technical clearance/NOC being issued based on the approval accorded by the Government and the GCZMA vide noted No. DE/5453/BAM/Part/Vol-III/TCP/19/2361 dated 19 September 2019 (sic 23rd October 2019).

11. On the above backdrop and as seen from what has been noted by us above, we see substance in Mr. Jagtiani's strenuous objections to the drastic prayers as made in the Petition to contend that such prayers ought not to have been made, overlooking the said vital aspects of the case that there is no illegality of the structures of respondent no. 8 as alleged by the petitioner. We observe that to incorporate such prayers in the above facts and circumstances was not a sound approach on the part of the petitioner, the petitioner ought to have been appropriately advised as we see that the prayers are not only in regard to the demolition of the structure, but also demolition of the structures which appears to have been not declared to be illegal by the Authorities. Also there is a prayer for restoration of the area to its original condition and also an order directing the authorities to levy

further exemplary and punitive damages for operating a resort without environment clearance and in violation of the provisions of the Town and Country Planning Act. Considering such prayers, which have a serious impact, in our opinion, it would not be incorrect for respondent no. 8 to feel aggrieved by such drastic and the brazen prayers made by the petitioner and that too without any foundation of any assail to the decision of the TCP authorities or of the GCZMA.

12. Be that as it may, we may fail in our duty if we do not sound a note of caution to any litigant, who invokes the jurisdiction of the Court in public interest, that there is an onerous duty and responsibility on such litigant to be more circumspect, guarded and careful in his approach when the rights of the private parties are questioned.

13. We have noted above that there is no foundation for such prayers as made in the Petition to be maintained. It is so fairly conceded on behalf of the petitioner that the right course for the petitioner, if at all, would now be to assail the decision of the TCP Department and/or of the GCZMA as noted by us above. Thus, the prayers as made in the Petition would not be maintainable. We thus restrain ourselves from not dismissing the Petition as urged

on behalf of respondent no. 8, we however, dispose of this Petition permitting the petitioner to take recourse to appropriate remedy in law, if the petitioner is of the opinion that the decision of the GCZMA is in any manner is in violation of the environmental norms.

14. With the above observations, the Petition is disposed of keeping open all contentions of the parties. No costs.

BHARAT P. DESHPANDE, J.

G.S. KULKARNI, J.

VAIGANKAR
ESHA SAINATH

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