

*Esha*

**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO. 406 OF 2021**

HOTEL SILVER SANDS, REP. BY ITS  
AUT. DIRECTOR, DIGVIJAY GUJRAL ...PETITIONER

*Versus*

STATE OF GOA, THR. ITS CHIEF  
SECRETARY AND 2 OTHERS ...RESPONDENTS

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Mr. Nitin N. Sardessai, Senior Advocate with Mr. Abhay Nachinolkar, Mr. Shivam Fadte, Mr. Kabir Sabnis and Mr. H. Vaze, Advocates *for the Petitioner.*

Mr. Prashil Arolkar, Additional Government Advocate *for Respondent Nos. 1 and 2.*

Mr. Nigel Da Costa Frias with Mr. Vishal Sawant, Advocates *for Respondent No. 3.*

**CORAM: MANISH PITALE, J.**

**RESERVED ON: 22<sup>nd</sup> February 2022.**

**PRONOUNCED ON: 2<sup>nd</sup> March 2022.**

**ORDER:**

1. The petitioner has approached this Court challenging an order dated 25.10.2021, passed by the respondent no. 2-Goa Coastal Zone Management Authority (GCZMA), whereby the GCZMA has reiterated its earlier directions to the petitioner to demolish all the structures in the property located in Colva village

at Salcete, Goa. According to the petitioner, the impugned order, passed by the GCZMA, was passed on a review of its own earlier order, passed in review jurisdiction, which was impermissible, and on this sole ground, the impugned order deserves to be set aside.

2. The facts leading up to the filing of this Writ Petition are that, this Court in a Public Interest Litigation issued directions to Authorities, including the GCZMA, to take action against illegal constructions in the State of Goa. In pursuance of the same, the GCZMA caused inquiry to be conducted. On the basis of the material collected, the GCZMA issued notices for personal hearing to various parties, including the petitioner herein. The petitioner was heard on the allegations of construction of illegal structures in the aforesaid village in the 187<sup>th</sup> meeting of the GCZMA, held on 30.10.2018. The petitioner was present alongwith its Advocate. The GCZMA found that the petitioner had failed to place on record approvals for the structures in question and upon taking into consideration survey plans and documents on record, as well as mapping carried out by the office of the Survey Records, it resolved that the petitioner had failed to justify the existence of the said structures in Colva village and further resolved to pass demolition order against all the aforesaid structures of the petitioner in Colva village.

3. In pursuance of the same, on 05.12.2018, the GCZMA issued a direction under Section 5 of the Environment (Protection) Act, 1986, read with the Rules framed thereunder, directing demolition of the aforesaid structures at the expense of the petitioner and for submission of compliance report.

4. Aggrieved by the same, the petitioner filed an Appeal before the National Green Tribunal (NGT) under Section 16 of the National Green Tribunal Act, 2010 (Act of 2010, for short). Various grounds of challenge were raised on behalf of the petitioner. By order dated 03.01.2019, the NGT dismissed the Appeal, thereby confirming the directions issued by the GCZMA.

5. Aggrieved by the same, the petitioner filed an Appeal before the Hon'ble Supreme Court under Section 22 of the Act of 2010. The said Appeal was dismissed on 18.01.2019, as a consequence of which, the order/direction issued by the GCZMA on 05.12.2018, attained finality.

6. The petitioner then filed a Review Application before the NGT, claiming that there was an error apparent on the face of the record of the order of the NGT. The petitioner also filed a Review Application before the GCZMA on 20.01.2019, claiming that it was filing a procedural review and not a review on the merits of the matter. On 01.05.2019, the NGT dismissed the

Review Application filed by the petitioner. Thereafter, the Review Application on procedural grounds, filed by the petitioner, came up for consideration before the GCZMA in its 210<sup>th</sup> meeting. The respondent no. 3 opposed the Application filed by the petitioner and contended that there was no necessity for re-hearing the matter.

7. In the 215<sup>th</sup> meeting of the GCZMA held on 22.10.2019, the Application filed on behalf of the petitioner was taken for consideration and it was noted that the petitioner had mainly raised two issues in the Review Application, claiming procedural flaws committed by the GCZMA. Firstly, it was claimed that the quorum of the GCZMA as per the relevant notification was defective when the 187<sup>th</sup> meeting was held, and secondly, it was contended that a procedural review could be granted because the GCZMA had ignored vital documents and there was a lapse of due procedure before arriving at the decision/minutes of the 187<sup>th</sup> meeting of the said Authority. Thereafter, further meetings of the GCZMA were conducted, wherein the petitioner as well as the respondent no. 3, were heard. Some directions were issued for checking the structures existing on the ground and after hearing the parties afresh, in the 253<sup>rd</sup> meeting of the GCZMA held on 04.03.2021, it was found that the ground truthing report indicated that some structures of the petitioner were constructed

without approvals from the relevant Authorities and Licensing Body, while in the entirety, all the structures could not be said to be illegal. On this basis, it was concluded that the decision taken by the GCZMA in its 187<sup>th</sup> meeting deserved to be partly rescinded and the alleged structures constructed by the petitioner, which were not part of the approved plans and identified by the Inspector of Survey and Land Records, were to be demolished and not the entire set of structures as a whole. It was also recorded that the proceedings stood disposed of. The minutes of the aforesaid meeting were uploaded on the website of the GCZMA. The petitioner claims to have downloaded the same on 17.03.2021.

8. Immediately in the next meeting i.e. the 254<sup>th</sup> meeting of the GCZMA held on 18.03.2021, it was recorded that upon deliberation, it was decided that the parties would have to be heard on the aspect of procedural review and also on the aspect as to in what manner the GCZMA could review its own decision taken in its 187<sup>th</sup> meeting held on 30.10.2018. The minutes of the meeting recorded that certain intricate facts may not have been brought to the notice of the Authority and further that the question as to whether the GCZMA had the power to review its own decision was yet to be decided finally. On this basis, fresh notices were issued to the petitioner as well as the respondent no.

3 for hearing on the aspect of maintainability of the Review Application.

9. Thereafter, hearings were conducted in various meetings and ultimately, in the 276<sup>th</sup> meeting held on 21.10.2021 and 23.10.2021, the GCZMA found that it had no jurisdiction to entertain the Review Application of the petitioner against the decision taken in the 187<sup>th</sup> meeting. The GCZMA framed three issues pertaining to the questions as to whether it had become *functus officio* after the decision recorded in the 253<sup>rd</sup> meeting; whether it was justified to review its own decision taken in the 187<sup>th</sup> meeting and whether the petitioner had suppressed material facts about the filing and subsequent dismissal of Appeal filed before the NGT. The GCZMA found on all the aforesaid three issues against the petitioner, holding that the directions dated 05.12.2018, issued in pursuance of the decision taken in the 187<sup>th</sup> meeting, had been confirmed by the dismissal of the Appeals by the NGT as well as the Supreme Court and also the dismissal of the Review Application filed by the petitioner before the NGT. By applying the doctrine of merger, the GCZMA found that the Review Application preferred by the petitioner alleging procedural flaws was not maintainable.

**10.** In pursuance of the findings in the 276<sup>th</sup> meeting of the GCZMA, the impugned order dated 25.10.2021 was issued, whereby direction was issued to the petitioner to demolish all the structures in the aforesaid property in Colva village.

**11.** The petitioner filed the present Writ Petition before this Court, claiming that the aforesaid impugned order dated 25.10.2021, issued by the GCZMA, was without jurisdiction as it amounted to reviewing an order passed in review proceedings. It was further claimed that upon the procedural review of the petitioner being granted in the 253<sup>rd</sup> meeting of the GCZMA, on facts, it was found that only some additional structures deserved to be demolished and therefore, the impugned order was wholly unsustainable. Since it was claimed that the impugned order was without jurisdiction, it was asserted that the Writ Petition was maintainable before this Court.

**12.** On 24.11.2021, this Court issued notices and granted interim stay of the impugned order dated 25.10.2021. Thereupon, the respondents entered appearance and filed their replies and thereafter, the Petition was taken up for hearing.

**13.** Mr. Nitin Sardesai, learned Senior Counsel appearing for the petitioner submitted that the impugned order dated 25.10.2021 was passed by the GCZMA wholly without

jurisdiction, for the reason that it amounted to reviewing of the order/decision issued by the GCZMA, while exercising review jurisdiction. It was submitted that such a review of an order passed in review proceedings could not be countenanced and therefore, the impugned order deserved to be set aside. On this very ground, it was claimed that the Writ Petition was maintainable before this Court.

14. The learned Senior Counsel submitted that the procedural review preferred by the petitioner before the GCZMA was clearly maintainable in the light of the law laid down by the Supreme Court in the case of **Kapra Mazdoor Ekta Union Vs. Birla Cotton Spinning and Weaving Mills Ltd. & Another, (2005) 13 SCC 777**. By placing reliance on paragraphs 18 and 19 of the said judgment, it was claimed that the procedural review belonged to a different category as compared to a review sought on merits. It was claimed that the petitioner had brought to the notice of the GCZMA that there were major procedural flaws culminating in the 187<sup>th</sup> meeting in respect of which order/direction dated 05.12.2018, was passed against the petitioner. It was submitted that the GCZMA itself appreciated the procedural flaws and upon obtaining a ground truthing report found substance in the contentions of the petitioner and thereby, correctly reviewed its own decision in the 253<sup>rd</sup> meeting. It was

submitted that such a procedural Review Application was clearly maintainable, despite dismissal of the Appeals of the petitioner by the NGT as well as the Supreme Court and even upon dismissal of the Review Application by the NGT.

15. It was submitted that the decision of the GCZMA in its 253<sup>rd</sup> meeting came into effect immediately. The minutes of the said meeting were uploaded on the website and the decision stood pronounced, published, notified and communicated as the petitioner downloaded the same on 17.03.2021. By relying upon the judgment of the Supreme Court in the case of **State Bank of India & Others Vs. S.N. Goyal, (2008) 8 SCC 92**, the learned Senior Counsel submitted that upon such publication, notification and communication of the decision contained in the minutes of the 253<sup>rd</sup> meeting of the GCZMA, the said Authority being a quasi-judicial authority became *functus officio* and it could not have taken any further proceedings in the matter, much less by exercising *suo motu* jurisdiction. The learned Senior Counsel appearing for the petitioner referred to Sections 4, 5 and 15 of the Environment (Protection) Act, as also, Rule 4 of the Rules framed thereunder and the provisions of the Right to Information Act, 2005 and Section 4 of the Indian Contract Act, 1872, to contend that the moment the decision/minutes of the 253<sup>rd</sup> meeting stood communicated to the petitioner, no further

proceedings could have been undertaken. Therefore, the impugned order dated 25.10.2021, was wholly without jurisdiction and deserved to be set aside.

**16.** As regards the aspect of finality attained by the order dated 05.12.2018, due to dismissal of the Appeals by the NGT as well as the Supreme Court, it was submitted that in view of the Review Application on procedural flaws being entertained by the GCZMA, no contention regarding finality could be accepted. It was submitted that when reality and true facts had come on record, on account of the ground truthing report obtained by the GCZMA, leading to its decision in 253<sup>rd</sup> meeting, justice required that the impugned order be set aside. It was emphasized that in pursuance of the decision taken in the 253<sup>rd</sup> meeting of the GCZMA, the petitioner had already demolished the offending additional structures. On this basis, it was submitted that the Writ Petition deserved to be allowed.

**17.** Mr. Prashil Arolkar, learned Additional Government Advocate appeared for respondent nos. 1 and 2. He submitted that a proper interpretation of the provisions of the Environment (Protection) Act and the Rules framed thereunder would show that the Review Application preferred on the alleged procedural flaws by the petitioner was not finally decided in the 253<sup>rd</sup>

meeting of the GCZMA. This was evident because no directions were issued under Section 5 of the Environment (Protection) Act, in pursuance of the said minutes of the meeting. It was emphasized that when the decision was taken in the 187<sup>th</sup> meeting of the GCZMA, specific direction was issued under Section 5 of the Environment (Protection) Act read with Rule 4 of the Rules, to the petitioner regarding demolition of the entire structures in the said property. As opposed to this, only the minutes of the 253<sup>rd</sup> meeting of the GCZMA were uploaded on the website and no direction or order was issued by the GCZMA under Section 5 of the Environment (Protection) Act read with Rule 4 of the Rules. It was at this stage itself, that at the 254<sup>th</sup> meeting of the GCZMA, it was found that the question of maintainability of review on procedural flaws preferred by the petitioner was yet to be decided and hence, notice was issued to the parties on the said aspect of the matter. After hearing was conducted on various dates, in the 276<sup>th</sup> meeting of the GCZMA, findings were rendered against the petitioner on three issues, including the very maintainability of the review on alleged procedural flaws. Accordingly, it was found that the Review Application could not be entertained and the said decision taken in its 276<sup>th</sup> meeting of the GCZMA resulted in the impugned order/direction dated 25.10.2021. On this basis, it was submitted that the contention of the petitioner that the

impugned order dated 25.10.2021 amounts to reviewing of an order passed in review jurisdiction, was fallacious and wholly unacceptable.

**18.** The learned Additional Government Advocate referred to the grounds raised in the Appeal filed by the petitioner before the NGT, as well as before the Supreme Court to emphasize that all grounds sought to be agitated under the garb of Review Application on procedural flaws were already raised and they stood rejected by the NGT as well as the Supreme Court. In fact, the Review Application filed before the NGT was dismissed, thereby indicating that the same grounds were re-agitated under the garb of procedural flaws. It was submitted that on this basis, the Writ Petition deserved to be dismissed.

**19.** Mr. Nigel Da Costa Frias, learned Counsel appearing for respondent no. 3 i.e. the original complainant, supported the contentions raised on behalf of respondent nos. 1 and 2. The learned Counsel took this Court through the grounds of challenge raised in the Appeal memo filed before the NGT as well as the Supreme Court. The contents of the Review Application filed before the NGT were also brought to the notice of this Court. He also invited attention of this Court to the contents of the Review Application filed before the GCZMA, in order to

emphasize that the very same grounds were already raised and therefore, the Review Application filed by the petitioner by relying upon the judgment of the Supreme Court in the case of **Kapra Mazdoor Ekta Union Vs. Birla Cotton Spinning and Weaving Mills Ltd. & Another** (supra) was wholly misplaced and it was clearly not maintainable.

**20.** It was further submitted by the learned Counsel appearing for respondent no. 3 that the minutes of the 253<sup>rd</sup> meeting, although uploaded on the website of the GCZMA, did not amount to an order or a direction as contemplated under Section 5 of the Environment (Protection) Act read with Rule 4 of the Rules. It was submitted that the contents of the minutes of the said meeting did not fructify into an order or direction. It was submitted that at this stage itself, the GCZMA realized that the question of very maintainability of the Review Application was yet to be decided and therefore, notices were issued to the parties and after hearing the parties, the GCZMA found that the petitioner had suppressed the fact of dismissal of the Appeal as well as the Review Application by the NGT and the fact that an Appeal was filed by the petitioner before the Supreme Court, which was also dismissed. The GCZMA on this basis found that there was a merger of the order dated 05.12.2018, passed by the GCZMA directing demolition of the entire structures in the said

property with the dismissal of the Appeal by the Supreme Court. Hence, it was found in the 276<sup>th</sup> meeting of the GCZMA that the Review Application claiming procedural flaws, filed by the petitioner was itself not maintainable and therefore, the impugned order dated 25.10.2021 was issued. It was submitted that the petitioner was not entitled to rely on any material that came on record pursuant to the said Review Application preferred before the GCZMA and even otherwise, the plan that came on record carried a note that the legality/illegality of the structures shown in the plan was not known and therefore, the plan could not be used for any purpose. Reliance was also placed on the judgment of the Supreme Court in the case of **Kunhayammed & Others Vs. State of Kerala & Others**, (2000) 6 SCC 359 and **Bipromasz Bipron Trading SA Vs. Bharat Electronics Limited (BEL)**, (2012) 6 SCC 384.

**21.** Having heard the learned Counsel for the rival parties, the principal contention raised on behalf of the petitioner needs to be addressed. The said contention is that the impugned order dated 25.10.2021 amounts to review of an order/direction passed by the GCZMA in a review proceeding, which is impermissible and that therefore, the impugned order is without jurisdiction. This is the very contention on the basis of which, the petitioner claims that the present Writ Petition is maintainable before this Court. A

necessary concomitant of this contention is that according to the petitioner, the decision in the 253<sup>rd</sup> meeting of the GCZMA was an order/direction of the said Authority, entertaining and disposing of the Review Application on procedural grounds moved by the petitioner and that the GCZMA had become *functus officio*, upon rendering the said decision in the 253<sup>rd</sup> meeting.

**22.** In this regard, a perusal of the minutes of the 253<sup>rd</sup> meeting of the GCZMA becomes necessary. A perusal of the same shows that there is reference to the Review Application on procedural grounds moved by the petitioner and the background in which the proceedings were initiated against the petitioner for removal of the alleged unauthorized structures in the aforesaid property and the procedural flaws sought to be highlighted by the petitioner. The minutes of the said meeting recorded that after issuing notice on the Review Application filed by the petitioner, the GCZMA thought it fit to call for a ground truthing report concerning the structures in the said property. After referring to such report, the GCZMA indeed recorded that some structures were constructed in the absence of approvals of the relevant Authorities and the Licensing Body and further, that such offending structures were required to be demolished and not the entire set of structures as a whole.

23. The minutes of the 253<sup>rd</sup> meeting of the GCZMA were signed by the Chairman and the Member Secretary. There is no serious dispute about the fact that these minutes were uploaded on the website of the GCZMA. The petitioner claims that it downloaded the said minutes of the meeting on 17.03.2021. According to the petitioner, since the said decision in the form of minutes of the meeting was uploaded on the website of the GCZMA, the requirement of the law as laid down by the Supreme Court in the case of **State Bank of India & Others Vs. S.N. Goyal** (supra) stood satisfied, thereby indicating that the GCZMA as a quasi-judicial Authority, had become *functus officio*, upon the minutes of the 253<sup>rd</sup> meeting being uploaded on the website.

24. It was submitted that the uploading of the minutes of the 253<sup>rd</sup> meeting, which also contained the aforesaid decision pertaining to the Review Application, amounted to publication, notification and communication of the decision to the petitioner and the parties concerned, thereby showing that the GCZMA was rendered *functus officio*, at that very moment. The relevant portion of the judgement of the Supreme Court in the case of **State Bank of India & Others Vs. S.N. Goyal** (supra) reads as follows:

*“The position is different with reference to quasi-judicial authorities. While some quasi-judicial tribunals fix a day for pronouncement and pronounce their orders on the day fixed, many quasi-judicial authorities do not pronounce their orders. Some publish or notify their orders. Some prepare and sign the orders and communicate the same to the party concerned. A quasi-judicial authority will become functus officio only when its order is pronounced, or published/notified or communicated (put in the course of transmission) to the party concerned. When an order is made in an office noting in a file but is not pronounced, published or communicated, nothing prevents the authority from correcting it or altering it for valid reasons. But once the order is pronounced or published or notified or communicated, the authority will become functus officio. The order dated 18-1-1995 made on an office note, was neither pronounced, nor published/notified nor communicated. Therefore, it cannot be said that the appointing authority became functus officio when it signed the note dated 18.1.1995.”*

**25.** In this context, the learned Senior Counsel appearing for the petitioner referred to Section 5 of the Environment (Protection) Act read with Rule 4 of the Rules to contend that the minutes of the 253<sup>rd</sup> meeting, uploaded on the website of the GCZMA, satisfy the expression “directions” used in the aforesaid provisions and therefore, the GCZMA, being a quasi-judicial authority, became *functus officio*. On this basis it was claimed

that the GCZMA could not re-open the matter for passing the impugned order dated 25.10.2021.

**26.** In this context, it is necessary to refer to Section 5 of the Environment (Protection) Act, which pertains to powers to give directions. The said provision mandates that the directions shall be issued in writing to any person and that such person shall be bound to comply with such directions. Rule 4 of the Rules framed under the aforesaid Act specify that any direction issued under Section 5 shall be in writing and it shall specify the nature of the action to be taken and the time within which it shall be complied with by the concerned person. According to the petitioner, the contents of the minutes of the 253<sup>rd</sup> meeting of the GCZMA, uploaded on the website were not required to be followed up with any order or direction and that uploading of such minutes of the meeting was itself a self-contained order of the GCZMA. Much emphasis was placed on the fact that the minutes of the meeting of the GCZMA contained a decision, which partly rescinded the decision in the 187<sup>th</sup> meeting, thereby showing that nothing further was required to be done. It was claimed that since the Review Application of the petitioner on procedural grounds stood partly allowed, no further order or directions were necessary and the proceedings stood closed.

27. A perusal of the record of the present case and the manner in which the GCZMA functions under the Environment (Protection) Act and Rules framed thereunder, shows that after proceedings are recorded in the minutes of the meeting, depending upon the contents thereof and the decision taken therein, specific orders/directions are issued under Section 5 of the Environment (Protection) Act. The record shows that the decision taken in the 187<sup>th</sup> meeting of the GCZMA culminated in directions dated 05.12.2018, issued under Section 5 of the Environment (Protection) Act and the Rules framed thereunder, whereby the petitioner was directed to demolish the entire structures in the property in question as they were found to be unauthorized and illegal. It is this direction of the GCZMA, which was made subject matter of challenge by the petitioner before the NGT under Section 16 of the Act of 2010. It is an admitted position that the NGT dismissed the Appeal and the Appeal filed by the petitioner before the Supreme Court under Section 22 of the Act of 2010, against the order of the NGT, was also dismissed by the Supreme Court. Thus, the directions issued by the GCZMA against the petitioner under Section 5 of the Environment (Protection) Act attained finality by dismissal of the Appeal by the Supreme Court.

28. The petitioner admittedly filed a Review Application before the NGT, which was also dismissed. The petitioner filed a Review Application before the GCZMA, claiming that it was a procedural review, which had nothing to do with the merits of the matter and claimed that the GCZMA could entertain the same as per the law laid down by the Supreme Court in the case of **Kapra Mazdoor Ekta Union Vs. Birla Cotton Spinning and Weaving Mills Ltd. & Another** (supra). It is significant that the aspect of maintainability of such Review Application was for consideration before the GCZMA and the parties were heard. No doubt, in the minutes of the 253<sup>rd</sup> meeting of the GCZMA, the Review Application was considered and a decision was arrived at, regarding necessity to demolish some of the structures and not the entire set of structures in the property in question. It was recorded that the decision taken in the 187<sup>th</sup> meeting of the GCZMA was required to be partly rescinded. The most crucial part is that no specific directions were issued by the GCZMA in pursuance of the 253<sup>rd</sup> meeting. The GCZMA did not issue a direction under Section 5 of the Environment (Protection) Act, as it had done by issuing direction dated 05.12.2018, after recording the minutes of the 187<sup>th</sup> meeting of the GCZMA. Even if the GCZMA had recorded that the minutes of the 187<sup>th</sup> meeting were required to be partly rescinded, a direction or order partly modifying the direction dated 05.12.2018 issued under Section 5

of the Environment (Protection) Act was necessarily required to be issued for the process of review initiated by the petitioner to reach its culmination. Admittedly, no such direction/order was issued. It is crucial that at this stage, in the 254<sup>th</sup> meeting itself, it was recorded that the question whether, GCZMA had power to review, was itself open in the backdrop of the fact that the issue had attained finality by dismissal of the Appeal by the Supreme Court. It was also recorded that when the aspect of procedural review was pressed into service on behalf of the petitioner, the matter having already attained finality, required detailed consideration. On this basis, notices were issued to the parties on hearing regarding the maintainability of the Review Application.

**29.** Pursuant thereto, the parties were heard on various dates and minutes of such meetings were recorded and also uploaded on the website of the GCZMA and ultimately, three specific issues were framed, which read as follows:

- (1) Whether the Authority became functus officio after the decision recorded in the minutes of 253<sup>rd</sup> meeting ?*
- (2) Whether the Authority has jurisdiction to review its decision taken at the 187<sup>th</sup> meeting held on 30/10/2018 ?*
- (3) Whether the applicant/original respondent suppressed a material fact from this Authority regarding the filing and*

*subsequent dismissal of its review petition  
by Hon'ble National Green Tribunal in its  
order dated 01.05.2019 in Review  
Application no. 1/2019 (WZ) ?*

**30.** While rendering findings on the aforesaid three issues in the 276<sup>th</sup> meeting of the GCZMA, it was found that the petitioner had not approached the GCZMA with clean hands. The petitioner having filed Review Application before the NGT, was concealed from the GCZMA and that it was a clear case of forum hunting on the part of the petitioner. The GCZMA also found that the doctrine of merger clearly applied because the petitioner had challenged the decision dated 05.12.2018, pertaining to demolition of the entire structures before the NGT in Appeal and thereafter, upon dismissal of appeal by the NGT, before the Supreme Court, where the Appeal was also dismissed. The dismissal of the Appeal by the Supreme Court led to merger of findings and directions issued by the GCZMA on 05.12.2018. It is after the 276<sup>th</sup> meeting of the GCZMA leading to the impugned order dated 25.12.2021, issued for specific directions under Section 5 of the Environment (Protection) Act and Rule 4 of the Rules, that the Review Application stood dismissed and that the petitioner was directed to demolish all the structures on the property.

**31.** It is after passing of the impugned order/direction dated 25.10.2021, that it can be said that the Review Application stood disposed of and the matter pertaining to Review Application reached its culmination. The petitioner is not justified in contending that the uploading of the minutes of the 253<sup>rd</sup> meeting on the website of the GCZMA was enough to show that the GCZMA had become *functus officio*. Once this conclusion is reached, the principal contention raised on behalf of the petitioner that the impugned order dated 25.10.2021 amounts to a review of an order passed on a Review Application, is wholly unsustainable. The impugned order dated 25.10.2021, therefore, cannot be said to be an order without jurisdiction.

**32.** It also becomes clear that the reliance placed on behalf of the petitioner on judgement of the Supreme Court in the case of **State Bank of India & Others Vs. S.N. Goyal** (supra) is misplaced. In the said judgment also, in the context of quasi-judicial authorities, it is laid down that when “an order” of such an Authority is pronounced, published, notified or communicated, then such an Authority becomes *functus officio*. This Court finds that the minutes of the 253<sup>rd</sup> meeting of the GCZMA, although uploaded on the website may amount to notification, publication or communication thereof, but since the minutes of the meeting do not have the status of an

order/direction of the GCZMA as a quasi-judicial Authority, the ratio of the said judgment is inapplicable.

**33.** There is another important aspect of the present matter, which concerns finality of orders in the backdrop of the doctrine of merger. In the present case, it is an admitted position that the direction/order dated 05.12.2018, issued by the GCZMA attained finality by dismissal of Appeal by the Supreme Court and its merger into the order of the Supreme Court. The petitioner exhausted the statutory remedies of Appeal before the NGT and the Supreme Court and met with failure. It is also an admitted position that the petitioner filed a Review Application before the NGT, which was also dismissed.

**34.** Yet, the petitioner filed the aforesaid Review Application before the original Authority i.e. GCZMA itself, claiming that it was a procedural review and not a review on merits. Therefore, this Court examined the grounds raised on behalf of the petitioner in the Appeal filed before the NGT and the Supreme Court, as also the grounds raised before the NGT in review and thereafter the Review Application filed before the GCZMA. A perusal of the Appeal Memo filed before the NGT shows that emphasis of the petitioner was on the aspect that findings recorded in the survey plan were not justified and that principles

of natural justice were violated and the documents produced by the petitioner were not considered. In the Appeal filed before the Supreme Court also, similar grounds of challenge were raised and specific grounds of challenge were raised pertaining to alleged violation of principles of natural justice, illegal and defective constitution of the GCZMA itself, illegal delegation of powers to the GCZMA, the said Authority acting in excess of jurisdiction, non-consideration of the material produced by the petitioner and that the fundamental rights of the petitioner were violated. As noticed above, the Supreme Court dismissed the Appeal after considering such grounds of Appeal.

**35.** The grounds on which the petitioner sought review before the NGT also show that the very same grounds pertaining to violation of principles of natural justice, illegal and defective constitution of the GCZMA and non-consideration of material were raised on behalf of the petitioner. Even in the Review Application filed before the GCZMA, in which the petitioner claimed that a review was not sought on merits, but only on procedural flaws shows that, again the very same grounds were raised on behalf of the petitioner. This Court has perused the Review Application filed by the petitioner allegedly on procedural flaws and it is found that the grounds therein are nothing but repetition of the grounds raised before the NGT as well as the

Supreme Court in Appeal as also the grounds raised in the Review Application before the GCZMA. Thus, it becomes clear that the petitioner was merely repeating the grounds of challenge and there was not an iota of procedural defect demonstrated on behalf of the petitioner. Hence, reliance placed on the judgment of **Kapra Mazdoor Ekta Union Vs. Birla Cotton Spinning and Weaving Mills Ltd. & Another** (supra), particularly paragraph 19 thereof, can be of no avail to the petitioner. It is found that the petitioner was only making desperate attempts to avoid the directions issued by the GCZMA in the order dated 05.12.2018. In this connection, it becomes clear that the petitioner is not justified in contending that this Court ought to look at the material that came on record during the process of the Review Application being considered by the GCZMA, to hold in favour of the petitioner. This Court is convinced that the findings rendered by the GCZMA on all the three issues in its 276<sup>th</sup> meeting, which culminated into the impugned order dated 25.10.2021, are correct and in consonance with the position of law. Once the direction dated 05.12.2018 attained finality, by dismissal of the Appeal by the Supreme Court and the doctrine of merger operated against the petitioner, there was no question of the GCZMA entertaining the Review Application. Merely because some observations were made in the 253<sup>rd</sup> meeting of the GCZMA, which in fact did not culminate into any order or

direction, it cannot be said that the same would accrue to the benefit of the petitioner in the face fact of the findings reached in the order/direction dated 05.12.2018 issued by the GCZMA, which had attained finality.

**36.** After the hearing was over, the learned Senior Counsel for the petitioner handed over judgment of the Supreme Court in the case of **L. Chandra Kumar Vs. Union of India & Others, (1997) 3 SCC 261**, to contend that judicial review being a part of the basic structure of the Constitution, jurisdiction of this Court under Articles 226 and 227 of the Constitution of India cannot be hampered in any manner. As against this, the learned Counsel appearing for the respondent no. 3 placed reliance on **Natural Resources Allocation, In Re, Special Reference No. 1 of 2012** reported in **(2012) 10 SCC 1**, to emphasize on finality of orders.

**37.** There can be no doubt about the fact that the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India is a special jurisdiction and discretion can be exercised in special cases in the interest of justice, but, the same would not stretch to the extent that reliefs can be granted to the petitioner herein. This Court has already disagreed with the principal ground of challenge in the present Writ Petition that the

impugned order dated 25.10.2021 amounts to a review of a review. It is also found that the direction dated 05.12.2018, issued against the petitioner for demolition of the entire structures in property attained finality by dismissal of the petitioner's Appeal by the Supreme Court. The inevitable fallout of the finality of the directions cannot be avoided by the procedure sought to be adopted by the petitioner.

**38.** As noted above, the grounds stated in the Review Application before the GCZMA, claiming it to be a procedural review, were identical to the grounds raised by the petitioner on merits against the order/direction dated 05.12.2018, issued by the GCZMA, while filing Appeal before the NGT as well as the Supreme Court. The challenge raised on the very same grounds stood rejected finally by the Supreme Court. Therefore, there is no question of miscarriage of justice or any situation warranting exercise of discretion in favour of the petitioner in the context of the impugned order dated 25.10.2021.

**39.** It is brought to the notice of this Court that a party claiming to be the original owner of the property, also filed a Writ Petition before this Court raising similar grounds against the directions of the GCZMA. Admittedly, the Petition stood dismissed and the same also attained finality. This gives an

impression that the petitioner has undertaken all kinds of steps to somehow avoid the inevitable fallout of the findings of the GCZMA issued in the order/direction under Section 5 of the Environment (Protection) Act. The attempt on the part of the petitioner to claim procedural review before the GCZMA met its logical end in the impugned order/direction dated 25.10.2021, wherein the Review Application was found to be not maintainable, thereby leading to directions to the petitioner to demolish the entire structures in the property in question.

**40.** The petitioner has failed to make out any case for interference with the impugned order, passed by the GCZMA, under writ jurisdiction sought to be invoked in the present Petition. Hence, the Petition is found to be without any merit and accordingly, it is dismissed.

**MANISH PITALE, J.**

**ORDER CONTINUED:**

41. Upon pronouncement of the Order, the learned Counsel appearing for the petitioner submitted that the interim Order granted by this Court may be continued for eight weeks.

42. The said request is opposed by the learned Counsel appearing for the respondents.

43. This Court has given detailed reasons in the Order as to why it is found that the Petition is without any merit and does not deserve consideration. Hence, the prayer for continuation of interim relief is rejected.

**MANISH PITALE, J.**