

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

PIL WRIT PETITION NO. 12 OF 2020

The Goa Foundation
through its Secretary,
Dr Claude Alvares,
with office @ Rm. 7, Le Brag
Chambers, Mapusa Clinic,
Mapusa Goa 403507

... Petitioner

Versus

- 1 Captain of Ports Department,
Through the Captain of Ports,
Dayanand Bandodkar Road,
Panaji Goa 403 001
- 2 State of Goa
Through its Chief Secretary,
having office at Secretariat,
Porvorim, Goa 403 521
- 3 Village Panchayat of Quellossim
Through its Sarpanch,
Quellossim, Goa 403 712
- 4 M/s Movaj Enterprises Pvt Ltd.
A Company incorporated under the
Companies Act, 1956
with office at 100/101, R. B. M. Road,
Hotel Le Meridien, Pune 411 001
- 5 Addl. Director of Panchayats (South)
Margao, Salcette, Goa 403 601
- 6 The Mamlatdar of Mormugao,
Vasco-da-Gama, Goa 403 711

7 Goa Coastal Zone Management Authority,
4th Floor, Dempo Towers,
Patto Plaza, Patto, Goa 403 001. ...Respondents

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

Mr Prashil Arolkar, Additional Government Advocate for Respondent
Nos. 1, 2, 5, 6 and 7.

Ms Pratiksha Nagvenkar, Advocate for Respondent No.3.

Mr S. S. Kantak, Senior Advocate with Mr Simoes Kher, Ms Neha
Kholkar and Ms Saicha Desai, Advocates for Respondent No.4.

**CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ**

DATED : 14th JUNE 2023

ORAL JUDGMENT (Per M.S. Sonak, J)

1. Heard Ms. Norma Alvares with Mr Om D'Costa for the
Petitioner, Mr P. Arolkar, learned Additional Government Advocate
for Respondent Nos. 1, 2, 5, 6 and 7, Ms Pratiksha Nagvenkar for
Respondent No.3 and Mr S. S. Kantak, learned Senior Advocate with
Mr Simoes Kher, Ms Neha Kholkar and Ms Saicha Desai for
Respondent No.4.

2. The Goa Foundation instituted this Public Interest Litigation
seeking, among other things quashing the order dated 05.02.2020
issued by the Caption of Ports (COP) renewing the validity of earlier
NOC dated 19.10.2016 issued to Respondent No.4 to set up a
floating recreational platforms/park/Mini India Park in the property

surveyed under Nos.170/0 and 171/0 of village Quelossim Mormugao Goa. The Petitioner contended that the area falls within the Coastal Zone Regulation and is a no-development zone regarding the CRZ Notification. The Petitioner also questioned the order dated 21.01.2020 issued by the Additional Director of Panchayats (South) setting aside the Panchayat's order dated 16.07.2019 denying permissions to Respondent No.4, among other things, on the ground that Respondent No.4 had no clearances from Goa Coastal Zone Management Authority (GCZMA) in terms of CRZ Notification, 2011. The Petitioner also alleged that Respondent No.4, based upon permissions/NOCs from the COP, had destroyed the Khazan lands within no development zone and sought orders of restitution of these lands to their original status.

3. In the public interest litigation, the Petitioner sought for following substantive reliefs:-

- (a) For an order quashing and setting aside the COP's NOC dated 19.10.2016 and the subsequent orders extending its validity dated 12.10.2017, 16.10.2018 and 05.02.2020;
- (b) For an order quashing and setting aside the order of the Addl. Director of Panchayats (South) dated 21.01.2020;
- (c) For an order directing restitution of the Khazans to their original status;
- (d) For an order directing an inquiry into the tenancy status of the impugned lands.

4. Ms Alvares, learned counsel for the Petitioner, at the outset, clarified that she was not pressing for the relief in terms of prayer clause (d) above.

5. The record bears out that the project sought to be implemented by Respondent No.4, i.e. project: Mini India Park was to comprise 60 floating platforms showcasing India's historical monuments along with a 5-star category resort, houseboats, floating cottages, water sports activity etc., over an area admeasuring 35,000 square metres of land and 60,000 square metres of the water body. Mr Kantak learned Senior Counsel for Respondent No.4 submitted that there was no proposal for 5-star resort, houseboats, or floating cottages. He offered that the project, as presently conceived, was to establish a Mini India Park comprising 60 floating platforms showcasing India's historical monuments.

6. On 19.10.2016, the COP granted NOCs for the floating platforms. These NOCs were extended from time to time and, as of date, continued in force. Based upon such NOCs, Respondent No.4 applied to Village Panchayat of Quelossim (Panchayat) permissions to establish floating platforms. By communication/order dated 16.07.2019, the Panchayat rejected this application, among other things, on the ground that the area in question is affected by CRZ Notification, 2011 and therefore, no permissions could be granted by the Panchayat without the project being approved by the GCZMA.

7. Respondent No.4 appealed the Panchayat's communication/order dated 16.07.2019 to the Director of the Panchayats. The appeal was made over to the Additional Director of Panchayats (South). By order dated 21.01.2020, which is one of the orders impugned in the present petition, the Additional Director of Panchayats set aside the Panchayat's order dated 16.07.2019 and directed the Panchayat to issue permission to Respondent No.4 subject to Respondent No.4 receiving extended approval from the COP.

8. The Panchayat filed a revision against the Additional Director's order dated 21.01.2020 before the District Judge-II, South Goa, invoking the provisions of the Panchayat Raj Act. By judgment and order dated 11.03.2022, the District Judge-II South Goa (Revisional Authority) quashed and set aside the Additional DOP's order dated 21.01.2020 and remanded the matter to the Additional DOP with a direction to reconsider the case after adverting to all the issues raised by the parties and to dispose of the appeal by making a reasoned order.

9. Accordingly, the challenge to the Additional DOP's order dated 21.01.2020 no longer survives in this petition. The Additional DOP's order is already set aside, and the Panchayat's communication/order dated 16.07.2019 denying Respondent No.4 permission to put up floating platforms stands revived. However, such revival is subject to Respondent No.4's appeal, remanded to the Additional DOP for fresh decision and disposal by passing a reasoned order. The Petitioner can

always apply for intervention before the Additional DOP, raise their objections, and defend the Panchayat's communication/order dated 16.07.2019. Suffice to note that the relief in terms of prayer clause (b) of the petition no longer survives given the above, subsequent development.

10. In so far as the relief in terms of prayer clause (a) is concerned, the reference will have to be made to the affidavit of James Braganza, Captain of Ports, filed on 24.02.2021. In para 9 of this affidavit, the COP has clarified the position about the NOCs issued by the office in the following terms:-

"9. I state that this Department had issued NOC dated 19.10.2016 to M/s Movaj Enterprises Pvt. Ltd., only to set up fibre moveable floating platforms and not for any permanent structure, and for which Caption of Ports Department is the only Authority to issue such NOC as it related to water-borne structure and has technical side, which eventually is to ensure seaworthiness."

11. Ms Alvares, learned counsel for the Petitioner, states that the COP's explanation is satisfactory since it refers only to setting up moveable fibre floating platforms and not putting up any permanent structure. She submitted that the clarification issued by COP states that the COP is the only authority to issue such NOCs certifying the feasibility in the context of water-borne structure and seaworthiness.

12. Ms Alvares states that with the above clarification/explanation, the Petitioner does not wish to press for relief in terms of the petition's prayer clause (a). She, however, clarifies that this is subject to the Petitioner's larger challenge that activities can only be undertaken in this area with compliance with the terms and conditions of the CRZ Notification, 2011. She submitted that this area would be a No Development Zone (NDZ) in the CRZ Notification and therefore, no activities of the nature intended by Respondent No.4 would be permitted. She submitted that in any case, the clearances would be necessary from the GCZMA before any such activities are undertaken.

13. Regarding the prayer clause (c) of the petition, we refer to the Petitioner's complaints dated 24/27.01.2017 to the GCZMA alleging the illegal dumping of mud by Respondent No.4 in the property surveyed under Nos.170 and 171 of Quellossim village. The GCZMA, upon taking cognizance of the complaint issued a stop work order on 09.02.2017. By further order dated 14.11.2017, the GCZMA directed Respondent No.4 to restore the sluice gates in Survey No.170 and 171 so that the destruction of mangroves is halted. Subsequently, the local MLA Alina Saldanha filed a complaint dated 25/28.05.2019 against Respondent No.4 regards the dumping of mud and undertaking of construction activities in survey Nos.170 and 171 by Respondent No.4. Accordingly, the GCZMA once again issued a stop work order on 17.06.2019.

14. The GCZMA inspected the site on 21.06.2019, and the site inspection report on pages 220 to 223 of the paper book records the following conclusions and recommendations.

“conclusion and Recommendation

- i) The Khazan land as well as the Mangroves area, both are CRZ-I areas.*
- ii) The filling done by red murrum at 09 different locations within the water filled area of Khazan land with Sy. No. 170/0 as well as the widening of the bunds by using lateritic boulders and murrum and the creation of a new E-W running bund without obtaining proper permission from the Authority indicates a violation of NOC issued by the Authority only for repair of bunds.*
- iii) Similarly, the cutting of Mangroves done all along the bund on the western side as seen during the site inspection and also of the Mangroves from the Hot Spot area lying towards the northern side without obtaining proper permission from the Authority and the Forest Department indicates another violation.*
- iv) This displays the mala fide intention of the violator to use the area by widening of bunds for some other purpose.*
- v) As per CRZ Regulation, the Khazan land and Mangroves are a CRZ I areas, where filling of low lying area and the cutting of Mangroves is not permissible without proper permission from the Authority.*
- vi) As such all these activities indicate CRZ violations, which will destroy the biodiversity and the ecology of the area.*
- vii) As per the information available with GCZMA, M/s Movaj Enterprises Pvt. Ltd. initially proposed the project for deploying of pontoons in the water filled area of the Khazan land with regard to Mini India project. However, due to violations at the start of the project, GCZMA issued a Show Cause Notice cum Stop Work Order, still the violator continued doing illegality.*

- viii) The non opening of the sluice gates and their closure till date and the widening of bunds and the filling of the areas of the Khazan land at site indicates that the proponent has a different project in mind and not the one for which the permissions were granted by the Authorities.*
- ix) The land filling done in Khazan land area also indicates an encroachment on the wetland for a change in land use pattern.*
- x) Since there is a violation of the CRZ Regulation at site, the proponent should be ordered to remove the mud filling done all along the bunds and those done at 9 different locations within the Khazan land area as well as for making the E-W running bund in the central portion which divides the Khazan land into two parts.*
- xi) Besides this, the three sluice gates which are kept closed by the proponent till date also should be ordered to be opened to restore and to maintain the natural condition of the area.*
- xii) Action also should be initiated for cutting large number of Mangroves along the western bund and from the Hot Spot area, without obtaining any permission from the Authority and from the Forest Department.*
- xiii) This may be deliberated in the Authority meeting for a suitable decision.”*

15. The record also bears out that Respondent No.4 applied to GCZMA for permission to restore the bunds and sluice gates so that they could be properly operated and maintained. The GCZMA, in its meeting held on 18.03.2020 resolved to conduct a site inspection along with the representatives of the local bodies and only after that decide upon the request of Respondent No.4.

16. Accordingly, a site inspection was held on 22.05.2020. The site inspection report records that upon inspecting the site and noting the

violations pointed out by MLA and village panchayat representatives the inspectors are of the opinion that, at least *prima facie*, there appear to be gross infringements of CRZ regulations committed in the properties though the observations/recommendations made earlier did not appear to have been complied with. However, the inspection report concludes by stating that requesting the DSLR to conduct a detailed survey regarding survey Nos. 170/0 and 171/1 would be appropriate to ascertain and document the correct position and extent of violations after comparing the same with the survey plan.

17. There is no clarity about the result of the survey undertaken by the DSLR. However, Mr Kantak submitted that the DSLR survey reported that the filling of the mud was outside the property of Respondent No.4 but in survey Nos.181 and 182. Suffice to record that at least before the Central Government approved the CZMP; the GCZMA had vacated the show-cause notice dated 17.06.2019 issued to Respondent No.4. This show-cause notice had been issued based upon the complaint of local MLA Alina Saldanha. The show cause notice was vacated mainly based on the DSLR report about the precise extent of Respondent No.4's property.

18. Mr Kantak however admitted that the report observed that the sluice gates were not opened, and Respondent No.4 was ordered to open the sluice gates immediately. Mr Kantak, on instructions, submitted that the sluice gates were accordingly opened and remain

open. Ms Alvares submitted that once the sluice gates are opened and there is ingress and egress of water, the khazan lands would be restored to their original status. Mr Kantak, without prejudice to his contention about the status of lands in question, on instructions stated and reiterated that the sluice gates have already been opened. This statement is accepted. The GCZMA must inspect the site in question and verify whether the sluice gates are indeed opened. If not, the GCZMA must ensure their opening so the site is restored to its original position. The prayer clause (c) of the petition, thus stands substantially redressed.

19. Ram Kumar Agarwal's affidavit dated 16.08.2021 backs Mr Kantak's submissions. But this affidavit also asserts that the activities proposed by Respondent No.4 are beyond the demarcated CRZ area. The Petitioner does not accept this position. In the additional affidavit filed by the Petitioner on 09.01.2023, the Petitioner has relied upon the approval of the Coastal Zone Management Plan (CZMP) 2011 for the State of Goa. It was submitted that as per this approved CZMP, the Petitioner's stand about the property where Respondent No.4 is putting up its project, being a khazan/mangrove, was confirmed. Copies of the map extract of the draft and approved CZMP concerning the subject properties marked in red by the Petitioner were annexed as Annexure A Collectively to the affidavit dated 09.01.2023. Based upon this, the Petitioner contends that such areas are no

development zone and nothing can be carried out therein without the Khazan management plan approved by the CRZ notification, 2011.

20. Ms Alvares submits that, given the approved CZMP, no activities can be undertaken at the site in question. She presents that, in any case, no activities can be undertaken without the approval from the GCZMA and other authorities under the CRZ Notification, 2011. Considering the reliefs in this petition, we do not deem it appropriate to go into this question at this stage.

21. If Respondent No.4 undertakes any activities without permissions/approvals from the GCZMA, it would always be open to the Petitioner or any public-spirited person or NGOs to object to such activities, among other things by taking out appropriate proceedings before the appropriate forum. Similarly, if such activities are undertaken by Respondent No.4 after obtaining approval from the GCZMA, again, it would be open to any public-spirited person or NGOs to question the grant of such approval/permissions by taking out appropriate proceedings before the appropriate forum.

22. However, now that the Additional Director of Panchayats' order dated 21.01.2020 is already set aside and the Panchayat's communication/order dated 16.07.2019 rejecting Respondent No.4's application for permission to undertake any activities is revived, there would be no point in pending this petition any further. Reliefs in

terms of prayer clauses (a), (b), and (c) stand substantially redressed. Prayer clause (d) was not pressed. The CRZ issues are left open with liberties to all parties to agitate the same if and when any occasion arises. Therefore there is no point in pending this Petition any further.

23. Accordingly, this petition is disposed of with the above directions to the GCZMA and liberties to the parties as indicated above.

24. The rule in this petition is disposed of in the above terms. There shall be no order as to costs.

BHARAT P. DESHPANDE, J

M. S. SONAK, J