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IN THE HIGH COURT OF BOMBAY AT GOA

PIL WRIT PETITION NO.39 OF 2023

Alex Fernandes

...Petitioner

Versus

State of Goa thr. the Chief Secretary And 12

Others

... Respondents

Mr Rohit Bras De Sa, Advocate with Mr Prataprao M. Naik, Advocate for the Petitioner.

Ms Sapna Mordekar, Additional Government Advocate for the Respondent nos. 1, 2, 4, 5, 6, 7, 8, 9, 10, 11 and 12.

Mr H. D. Naik, Advocate for Respondent No.3.

Mr Pranay Kamat, Advocate for Respondent no.12.

Mr Gaurish Agni, Advocate with Mr Kishan K. Kavlekar, Advocate for Respondent No.13.

**CORAM: M. S. SONAK &
VALMIKI SA MENEZES, JJ.**

Date: 16th JANUARY 2024

P.C.:

1. Heard Mr Rohit Bras De Sa, learned counsel for the Petitioner and Ms Sapna Mordekar, learned Additional Government Advocate for respondents No.1, 2, 4, 5, 6, 7, 8, 9, 10, 11 and 12.

2. This petition seeks following reliefs:-

`A. For a Writ of certiorari or any other Writ order or direction in nature of certiorari under Article 226 of the Constitution of

India calling for the records and proceedings before the GCZMA and after considering the legality correctness and propriety of the Site Inspection Report as annexure - and the no objection certificate for reconstruction dated - this Honourable Court may be pleased to quash and set aside the same.

B. For a Writ of Mandamus or any other Writ order or direction in the nature of Mandamus under Article 226 of the Constitution of India directing the GCZMA to withdraw/revoke the Site Inspection Report dated nil - and the NOC dated - granted for reconstruction to the Respondent No.13.

C. For a declaratory Writ or any other Writ order or direction in nature of declaration declaring that the Site Inspection Report dated nil prepared by the officials of the GCZMA at annexured - to the Petition and the NOC for reconstruction granted to the Respondent annexured to the Petition are illegal, ultravires the provisions of CRZ Regulations and unconstitutional.

D. For a Writ of Mandamus or any other Writ order or direction in the nature of Mandamus under Article 226 of the Constitution of India directing the Respondent state Authorities more particularly Officials of GCZMA, DSLR, NGPDA and PWD to jointly hold a Site Inspection of the site in question for the purpose of determining the area of encroachment/excavation.

E. For a Writ of Mandamus or any other Writ Order or direction in the nature of Mandamus under Article 226 of the Constitution of India directing the Directorate of Settlement and land records and the GCZMA to jointly determined the existence of the structure pre-1991 in Survey No. 200/13 of Calangute Bardez Goa.

F. For a Writ of Prohibition or any other Writ order or direction in nature of Prohibition under Article 226 of the Constitution of India directing the Respondent State Authorities not to proceed on the basis of the Site Inspection Report prepared by the GCZMA dated and the NOC for reconstruction granted to the Respondent No. 13 at annexed to the Petition as the same is

illegal arbitrary, ultravires the provisions of CRZ Regulations and unconstitutional'

3. This petition was filed on 12.10.2023. There is no reference in this petition to the Order of Discharge dated 14.10.2021 made by the Goa Coastal Zone Management Authority (GCZMA). This order was produced before the court today by Ms Sapna Mordekar, an additional government advocate.

4. On perusal of this order, it suggests that a copy of the same was marked to the petitioner and the petitioner's Advocate. However, Mr Rohit Bras De Sa, learned counsel for the petitioner, states that this copy was never served upon either the petitioner or his Advocate. This position is disputed by the Counsel for the Respondents. At this stage, we do not wish to go into this controversy.

5. The Site Inspection Reports, which are referred to in this petition and which are sought to be quashed, were considered or were suggested to be considered by the GCZMA. The Site Inspection Reports referred to by Mr Rohit Bras De Sa on page 88 of the paper book is dated 28.07.2020. Therefore by challenging some site inspection reports or suggestion that others are to be preferred, the Petitioner basically wants his complaint to be revisited even though GCZMA has already made its order disposing of the complaint on 14.10.2021. This attempt is being made without even

challenging the GCZMA order dated 14.10.2021. As against the Order of Discharge dated 14.10.2021 made by the GCZMA, the petitioner, if aggrieved, has a remedy before the National Green Tribunal.

6. Accordingly, without going into the issue as to whether the Discharge Order dated 14.10.2021 was indeed served upon the petitioner or not, we decline to entertain this petition because the petitioner has an alternate and efficacious remedy available under the National Green Tribunal, which he can always avail. From the perusal of the Discharge Order dated 14.10.2021, we find that the petitioner and his Advocate were present before the GCZMA. Mr Rohit Bras De Sa states that the petitioner may have filed written statements but was not given an oral hearing. Again, this is not a matter which can be gone into or which should be gone into in this petition.

7. The petition, as instituted, will also involve disputed questions of fact because the petitioner alleges that there is encroachment on the public road. The respondents contest this position. The parties rely upon the reports which favour themselves. This is yet another reason for not entertaining this writ petition.

8. At this stage, Mr Rohit Bras De Sa states that construction requires NGPDA permissions, and until such permissions are obtained, restraint should be imposed upon the private respondent

to carry out any encroachment on the site. As noted earlier, the thrust of the petitioner was concerning the Site Inspection and the proceedings before the GCZMA. Besides, there is no clarity on the issue of service of GCZMA order on the Petitioner. Therefore, at the behest of this petitioner, we do not think we should make any orders in this petition.

9. Accordingly, this petition is disposed of, however, by granting the petitioner liberty to avail of alternate remedies to seek redressal of his grievances. All the Respondent's contentions are also left open.

10. This Petition is disposed of in the above terms without any order for costs.

VALMIKI SA MENEZES, J.

M. S. SONAK, J.

MARIA SUZANA REBELLO Digitally signed by MARIA SUZANA REBELLO
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