

Item No.6

(Pune Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

THROUGH PHYSICAL HEARING (WITH HYBRID OPTION)

**Appeal No.01/2023(WZ)
I.A. No.11/2023(WZ)**

Hevona Fernandes

.....Appellant

Versus

GCZMA & Ors.

....Respondent(s)

Date of hearing: 07.08.2023

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Appellant	:	Ms. Fawia Mesquita, Advocate
Respondent(s)	:	Ms. Supriya Dangare, Advocate for R-1/GCZMA & R-2/Dy. Collector Ms. Manasi Joshi, Advocate for R-1/GCZMA Mr. Pronoy Kamat, Advocate for R-3/Pvt. Party

ORDER

1. This appeal has been preferred against the order dated 18.11.2022 read-with order dated 05.12.2022, whereby the respondent No.1/GCZMA has ordered demolition of the structure/house at Survey No.118/8, Village Agonda Canacona belonging to the appellant.

2. Heard the arguments of learned Counsel for the appellant as well as the learned Counsel for respondent No.3/Darshan Pissolo Naik Gaonkar (Private Complainant) and the learned Counsel for respondent No.1/GCZMA.

3. We made a query from learned Counsel for the appellant as to what are the documents on the basis of which it is being claimed by the appellant that the property, which has been ordered to be demolished, existed prior to 1991. In this regard, the learned Counsel for appellant

has drawn our attention to page no.127 of the paper book, which is a General Power of Attorney executed by the father-in-law of the appellant namely Benjamin Toaquim Mariano Fernandes in favour of Assumpcao Emeliano Salvador Berges, in which the immovable property is recorded as Rajabag Dhaval Khajan situated at Canacona, on 01.11.1977 as per the signature of Sub-Registrar. Based on this, it is argued by the learned Counsel for appellant that the property in question, which is ordered to be demolished, should be treated to have been in existence on the date when this Power of Attorney was executed i.e. on 01.11.1977.

4. The learned Counsel for appellant has further argued that the appellant has inherited the property in question from her father-in-law. At this stage, we made a query from the learned Counsel for appellant as to whether this document was placed by the appellant before the GCZMA at the time of consideration of the matter, she said that it was placed but the same was not considered by the GCZMA. The learned Counsel for appellant has taken us through the impugned order, where-in at page no. 18 of the paper book the documents, which were relied upon by the complainant, are mentioned as follows:-

- “ i. Detailed reply to show cause notice dated 01/07/2021*
- ii. Reply dated 28/10/2021 to letter dated 07/10/2021 filed by Complainant.*
- iii. Consolidated reply dated 23/06/2022 to letter dated 26/05/2022 filed by the Complainant and report of site inspection conducted on 02/03/2021.*
- iv. Reply dated 09/08/2022.”*

5. The said documents are recorded in the impugned order as having been relied upon by the complainant. But the learned Counsel for appellant submits that it has been recorded by mistake as Complainant as it should be respondent i.e. the appellant herein. We find it to be a clerical error, therefore, we find that these documents were relied upon as

per admission by the appellant before the GCZMA. But it does not contain any reference to the Power of Attorney, which is now being relied upon by the appellant before us.

6. We then enquired from the learned Counsel for appellant as to whether it has been mentioned by the appellant in the affidavit that this document was placed before the GCZMA but the same was omitted from being considered. In this regard, the learned Counsel says that the same has not been mentioned specifically.

7. Thereafter, the learned Counsel for appellant has drawn our attention to page nos.97 to 202 of the paper book, which is a Judgment passed by the Judicial Magistrate, First Class, Margao in *Criminal Case No.266/8/1976 [Apagi Sitaram Asurkar (Complainant) vs. Assuncao Emelieme Berges (Power of Attorney holder of the father-in-law of the appellant)]*. This Criminal case related to Sections 447 and 379 of the I.P.C., where-in allegation is made against the accused that he had plucked 30 coconuts from a tree worth of Rs.25/- from the property known as 'Maldarbaga' or 'Ragibagaet'. In this case, the accused has been acquitted being given benefit of doubt. Based on this Judgment, it is argued by the learned Counsel for the appellant that the allegation was not found substantiated against the Power of Attorney holders of the father-in-law of the appellant because in para no.7 of the said Judgment, it is recorded that "the accused seems to have plucked the coconut trees on the assertion of the *bonafide* claim of right over the coconut trees". It is argued by the learned Counsel for appellant that this shows that the property from which the structure is ordered to be demolished by the impugned order, existed prior to 1991. We do not find any force in the argument of learned Counsel for the appellant, which has been made with respect to above two documents. In the said Judgment dated

15.09.1979, we do not find any reference of the property, which could be linked to the property, which has been ordered to be demolished. Therefore, on that basis, we cannot hold that the property in question stood in existence prior to 1991. Similarly, with respect to the Power of Attorney, the argument made above by the learned Counsel for the appellant does not appear to be good enough to hold by us that the property in question stood prior to 1991 because the property mentioned in that Power of Attorney also does not appear to be the same, which has been ordered to be demolished. We do not find any link between the two properties.

8. From the side of respondent No.3/Private Party, it is argued by the learned Counsel that the GCZMA has rightly ordered the property in question to be demolished because the same was not found to be in existence prior to 1991 and there is no error in the said order. In this regard, he has drawn our attention to the order of demolition passed by the Village Panchayat, Agonda, Canacona, Goa, which is annexed at page no.214 of the paper book, where-in, in para no.3, following is recorded:-

“And whereas you were issued a show cause notice dt.4/4/2008 calling upon you to cause as to why the illegal structures / structure (1) located in survey no — 118/8 should not be demolished in pursuance of powers under Goa Panchayat Raj Act. Your reply was considered by the village panchayat at its meeting held on 29/4/2009 and the Village panchayat noted that you have not supported your case of existence of the unauthorized structure existing prior to 19/2/1991. The Village panchayat noted that the said structure is without license from the. Village panchayat and its existence prior to 19/02/1991 has not been justified. You have not brought any evidence on record. Hence by resolution No.1 passed at its meeting held on 10/06/2009 the Village panchayat of Agonda has rejected the contention raised by you and have passed the resolution directing you to demolish the said structure within a period of 30days from today.

The Village panchayat is pleased to grant a period of 30 days taking into consideration the current monsoon season.”

9. Based on the above order, it is argued by the learned Counsel that even Village Panchayat had not found the property in question to be in existence prior to 1991.

10. Thereafter, the learned Counsel for the respondent No.3 has drawn our attention to page no.15 of the paper book, where-on the relevant para of impugned order is read out by him, in which following is recorded:-

“AND WHEREAS, the matter was heard in the 306th GCZMA meeting held on 26.05/2022. Adv P. Kamat present for the Complainant. Ld. Advocate for the Respondent present. The Complainant submitted that he is the owner of the property bearing survey no 118/8 of village Agonda Canacona Goa. He further submitted that Respondent has built a new house in survey no 118/8 village Agonda Canacona which was given house no. 371A in the year 2002. Further he submitted that there is another house belonging to the Respondent which has house no. 371 which is completely different structure in a different property. The new structure bearing house no 371/A is a subject matter of proceeding under Suo Moto Writ Petition which is pending before the Hon'ble High Court. The Village Panchayat had in fact issued a demolition order pursuant to inquiry. The Respondent is trying to use documents of the other house to save the new structure.”

11. Thereafter, the learned Counsel for respondent No.3 has drawn our attention to page nos.215-216 of the paper book, in which at page no.215, information obtained by the respondent No.3 under RTI Act, is contained, where-in it is recorded that “House No. 371/A was assessed in the name of Smt. Hevona Fernandes in the year 2001-2002 & further application & other documents not traceable in Village Panchayat record”. At page no. 216 of the paper book, there is an information given to the respondent No.3 under RTI, which says that the “Survey No. 118/7 of Village: Agonda and their name of House No.371 was registered in the name of Joaquim Mariano Fernandes in Panchayat house tax record in the year 1980-81 to 212-13 and from the year 2013-14 to till date i.e. 02/11/2020, the said house is transferred in the name of Smt. Hevona Fernandes (appellant herein)”. Thereafter, the learned Counsel has drawn our attention to page nos.217-218 of the paper book, which contains the

Survey maps, which show that Survey Nos.118/8 and 118/1,7 are two different survey numbers.

12. Based on the above, it is argued by the learned Counsel for respondent No.3 that the appellant has tried to take advance of papers of different properties being shown, in order to establish that the property in question stood in existence prior to 1991, which cannot be allowed and the Order of GCZMA is rightly passed.

13. From the side of respondent No.1/GCZMA, no written reply has been filed. But it is argued by the learned Counsel that there is no error in the impugned order and that there was no documentary evidence extended from the side of appellant to show that the structure in question stood prior to 1991 and accordingly, the same was directed to be demolished.

14. We find no force in the argument made by the learned Counsel for appellant in this regard because whatever documents, which have been relied upon by the appellant, in order to establish that the impugned property existed prior to 1991, were not sufficient to establish that the said property existed prior to 1991 as alleged and therefore, we do not find any error in the conclusion drawn by the GCZMA. Therefore, this appeal deserves to be dismissed and is accordingly dismissed. No order as to cost.

15. All pending applications, if any, also stand disposed of.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

August 07, 2023
Appeal No. 01/2023(WZ)
I.A. No. 11/2023(WZ)
P.Kr