

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

THROUGH PHYSICAL HEARING (WITH HYBRID OPTION)

APPEAL NO.07 OF 2023 (WZ)

The Colva Civic & Consumer Forum

Through its President Mrs. Judith Almeida
Aged 67 years, R/o H.No. 257/1, Bagdem,
Ward 3, Colva, Salcete – Goa – 403708.
Reg. No. – 268/GOA/2009,
Email id: Judith.almeida1707@gmail.com,
Contact No. – 9823085206.

.... Appellant

Versus

1. **THE GOA COASTAL ZONE MANAGEMENT AUTHORITY**, through its
Member Secretary,
Goa Coastal Zone Management Authority,
4th Floor, Dempo Towers,
Patto Plaza, Panaji, Goa – 403001,
Email : goacoastalzone@gmail.com
Contact No. – 0832-2407186.
2. **THE STATE OF GOA**,
Through its Chief Secretary,
C/o Secretariat, Porvorim, Goa – 403521,
Email id: cs-go@nic.in
Contact No. – 0832-2419402
3. **M/S. WEST ZONE HOTEL**
Alias SALCETE BEACH RESORT.
H. Nos 295/8,9,10,11 & 12. 3rd Ward,
Colva, Salcete, South Goa. 403708,
Email: info@salcetebeachresort.com
Contact No. – 0832-2788847.

.... Respondents

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

Appellant : Mrs. Judith Almeda, Appellant in-person
Respondent(s) : Ms. Manashi Joshi, Advocate for R-1/GCZMA &
R-2/ State of Goa through Chief Secretary
Mr. Abhijit Gosavi, Advocate along-with
Mr. Shivshankar Swaminathan, Advocate for
R-3/PP

Reserved on : 14.05.2024

Pronounced on : 27.05.2024

JUDGMENT

1. This Appeal No. 07 of 2023[WZ] has been filed seeking quashing partially the order of Respondent No. 1 The Goa Coastal Zone Management Authority (GCZMA) dated 09.12.2022 whereby Respondent No. 1 has discharged the Show Cause Notice with regards to the 5 cottages of G+1, the Restaurant, S.T.P, Generator Shed and the Swimming pool, the same having been found to be as per the approved plan; Further it is prayed that direction be issued to Respondent No. 3 M/s. West Zone Hotel alias Salcete Beach Resort, to demolish the above-mentioned structures and environmental compensation be recovered from Respondent No. 3.
2. The facts in brief of this Appeal are as follows. The Appellant had filed a Complaint on 09.10.2018 to Respondent No. 1 that Respondent No. 3 had commenced renovation, repair, and reconstruction activities on Survey No. 54/5, village Colva, Salcete Taluka, which plot was within the 200-500 m of the HTL in CRZ-III area and contained sand dunes. Pursuant to the said

complaint Respondent No. 1 carried out a Site Inspection on 23.11.2018, and the following findings emerged from the GCZMA report:

- a. As per CRZ Regulations, new constructions were permissible is only of G+1 with 33% F.A.R. whereas the 5 units of G+2 structures were found constructed at the site in the N-S direction, which were not permissible within 200-500 m of the HTL in CRZ – III area. Besides, there were two sheds also constructed with a large platform to accommodate a swimming pool having a smaller shed at the northern edge.
- b. It was not known whether permissions were obtained from Respondent No.1-GCZMA, for the said constructions/repair/renovation of the said structures.
- c. The western boundary of the plot which was sandy gives an impression of the remnant of the edge of sand dune. Therefore verification would be required.
- d. Even the repair and renovation of the structures within 200-500m of the HTL in the CRZ-III area is not permissible without permission from GCZMA as per CRZ Regulation. The said report is annexed as **Exhibit ‘C’** to the Appeal at pages 36 and 37 of the Paper book.

3. The Respondent No. 1 issued Show Cause Notice cum Stop Work Order, which was issued on 07.05.2019 to Respondent NO. 3 under Section 5, read with Rule 4 of the Environment Act 1986, which is annexed as **Exhibit ‘D’** to the Appeal at pages 38-40 of the paper book, on the ground that the said illegal construction was highly detrimental to the coastal Ecosystem, and that Respondent No. 3 had not obtained any prior approval from the GCZMA. Despite receiving the notice, Respondent 3 continued to carry on the construction at the site, which led to a fresh complaint dt. 21.02.2020 being filed by the Appellant, bringing to the Respondent 1- Authority’s notice the facts that Respondent No. 3 was continuing with the construction and had even started constructions on a new plot bearing Sy. No. 55/3, village Colva,

Salcete Taluka, adjacent to the Sy. No. 54/5. During the pendency of the proceedings initiated on the complaint of the Applicant, another complaint *inter alia* regarding the same unauthorized constructions was made on 14.08.2019 by Shri Churchill Alemao. Therefore, Respondent No.1 decided to club both complaints together which is apparent from the impugned order and a fresh hearing notice dt. 18.11.2019 with respect to the survey nos 54/5 and 55/3 of Colva Village, was issued, a copy of which is annexed as '**Exhibit F**' to the Appeal at pages 43-44 of the paper book). Pursuant to the said complaint a fresh site inspection was conducted by the GCZMA and the DSLR on 21.05.2020 of survey nos. 54/5 and 55/3 in the presence of the Expert member, a copy of which is annexed as '**Exhibit G**' to the Appeal at pages 45-47 of the paper book. In the said site inspection report in survey no. 54/5, the offending structures were identified as 'Stage, Shower room, Basement below swimming pool deck, Restaurant (pool side), Fountain, Interlocking pavers on a concrete base (part)' and in Survey no. 55/3, the offending structures were identified as interlocking pavers on the concrete base, Generator Shed, Restaurant structure, second floor of five G+1 structures, car porch, and security cabin. In the concluding part of the said report, it is recommended that the said structures that were identified, did not have the approval of the GCZMA and, hence needed to be demolished/removed.

4. Further it is mentioned that with respect to the inconsistency between the decision taken in the meeting of the GSCCE held on 27.04.1994 and Country Town Planning (CTP's) order 23.06.1994, issued thereunder and the approved plan produced by Respondent No. 3 and consequently the legal status of swimming pool existing within s.no 54/5, the report dated 04.02.2021 recommended that the Respondent No.1-Authority take appropriate decision thereon.

5. After having taken up the matter on multiple dates between 2020-2022, Respondent No.1 passed impugned order dt. 09.12.2022 discharging Respondent 3 in respect of some of the structures i.e. with regards to (a) 5

cottages of Gr+1 (instead of Gr+2), illegal extensions into setbacks beyond the approved 98.64 sqm (b) Restaurant, (c) Generator shed in survey no. 55/3 & (d) swimming pool in sy.no. 54/5. The said order was passed in an arbitrary manner, without considering the site inspection Reports of Respondent 1 dated 23.11.2018 and dated 04.02.2021 & also the submissions of the Appellant.

6. It is further submitted that Respondent 1 has complied with only part of the findings mentioned in the Report dated 04.02.2021 and ordered the demolition of certain offending structures only, whereas certain other structures mentioned in the same report as offending structures, with respect to a discharge order was passed: (A) Second floor of five Gr. + 1 structures, (B) Restaurant, (C) Generator shed and (D) Swimming Pool. The two different yardsticks could not have been applied while passing the demolition order of some structures, as all structures were found to be without necessary approvals and in violation of the CRZ Notification.

7. With respect to 5 Ground + 2 Structures, the Authority – GCZMA concluded that the permission/approved plan signed by the Chief Town Planner, TCP, Panaji dated 23.06.1994 was for ground plus first floor structure in Sy No. 55/3 and 54/5 of Colva Village. With respect to the second floor of each of these 5 structures, the Authority – GCZMA permitted the same considering them to be temporary in nature and purportedly to ensure protection from the rain. The GCZMA has relied erroneously on the approval of the Goa State Committee on Coastal Environment (GSCCE) letter dated 23.06.1994 for the construction, additions & alterations of Gr + 2 cottages to the five Ground floor cottages, without considering that these cottages were actually constructed by Respondent 3 in excess of the approved area, and the second floors were put up without any CRZ approval.

8. Further it is mentioned that the constructions of the present structures in Sy.no 55/3 were approved by the EDC in its 13th and 17th meetings and by IMC (Inter Ministerial Committee) in their meeting held on

13.08.1986, for a total of 5 cottages comprising an area of 400 sqm, with each structure/cottage having an area of 80.00 sq mts. All the permitted structures were to be ground floor only with the sloping roof having Mangalore tiles. The impugned order states that the 5 Ground + 1 Cottage each has an area of 106 m² plinth, which shows an increase of 26. 00 sq mts in respect of each of the 5 cottages, which is in violation of and beyond the approved plan of 1986. Therefore this additional area has to be demolished of each of these 5 cottages.

9. The Ground + 1 structures were required to have a sloping roof and not a flat one. However, GCZMA in their both inspections made on 23.11.2018 and 04.02.2021 found that all the 5 Gr + 1 cottages had flat roofs, in violation of the approved plan but no directions were issued in the impugned order for the removal of the flat roofs, to ensure compliance with the approved plans' requirement. With respect to the 2nd floor of the five cottages, GCZMA has failed to direct demolition even though for them there was no CRZ approval, therefore for the lack of said approval, these structures were required to be demolished. If there was no CRZ approval required as per law, whether the same was made for 'protection from rain' or otherwise, is immaterial – as any such use will not cure the defect of the approvals. The Respondent 3/PP has started covering the second floor of two of the structures and the same was brought to the notice of GCZMA during proceedings by way of presenting a photograph which is annexed at 'Exhibit I' taken on 27.02.2022 and provided to the Authority on 28.02.2022.

10. The construction of a Restaurant for an area of 98.64 sqm was approved on 21.06.1990 Sy. No. 55/3 at a particular part of the property, however, Respondent 3 has removed that Restaurant and has reconstructed the Restaurant in a different part of the Property. The permission dt. 21.06.1990 and the 16th minutes of the Eco Development Council (EDC) dt. 07.05.1990 is enclosed as '**Exhibit J** Colly' which is annexed at pages 54-55. The fact of this relocation is recorded in the impugned order, however, the GCZMA has concluded that the relocation of an approved restaurant is a

permissible act. Despite the fact that no such concept of relocation is envisaged or provided under CRZ notification 2011, as the same would require a fresh approval/CRZ clearance from GCZMA which was not taken, hence that also would require to be demolished.

11. With respect to the 'Generator Shed' in Sy. No. 55/3, the GCZMA decided in the impugned order against the demolition of the same and approved such construction on the ground that the said shed was temporary in nature. In this regard, it is submitted that even for temporary construction an approval was mandatory from GCZMA, and in the absence of the same such a generator shed was required to be demolish.

12. The GCZMA discharged the Show Cause Notice in relation to the Swimming Pool, holding that the same have been approved by the GSCCE in its permission dt. 23.06.1994, Xerox copy of which is produced by Respondent No. 3. But a certified copy of the said approval was sought by the Appellant under RTI which makes no reference to the swimming pool plan either in a permission or the approved plan.

13. Further it is mentioned that there is no Conversion Sanad obtained by Respondent No. 3 in respect of the swimming pool to be constructed on Sy. No. 54/5. A site inspection was conducted on 25.10.2000 which also does not mention the existence of any swimming pool at the said survey no. The inspection report is annexed as '**Exhibit K**' at page 57. Having drawn attention to the above discrepancies it is mentioned that, these important discrepancies in the approved plan produced by Respondent 3, were not considered by GCZMA, in coming to the conclusion that the Swimming Pool had been approved in 1994 despite the fact that the said permission and the approved plan makes no reference to any swimming pool being permitted. Therefore setting up such a pool without prior approval is liable to be demolished.

14. As per the approved plan produced on record, Respondent No. 3 permitted to put up 5 cottages comprising a total area of 400 sq. mts., and a Restaurant comprising an area of 98.64 sq. mts, therefore, the total area of

approved constructions was total 498.64 sq. mts. The GCZMA in its impugned order records that the covered area in 2008 was 1,200 sqm. Therefore all the additional areas including all the new constructions occupying the land beyond 498.64 sq mts, which is beyond the plan, should be demolished.

15. Further it is mentioned that the plots in question lie between 200 – 500 meters from the HTL which has sand dune on them as recorded in all permissions accorded by the EDC/IMC/GSCCE and in a letter from the South Goa Planning and Development Authority dt. 17.12.1987, which is enclosed as **‘Exhibit L’** on page 59 of the paper book.

16. Further it is mentioned that rapid unauthorized constructions, made by Respondent 3, despite issuance of the stop work order and the GCZMA failed to deal with these structures even though photographs of such fresh constructions were presented before them which are filed herein as ‘Exhibit M Colly’. Hence fresh survey is stated to be necessary at the loco to identify the numerous illegal structures put up without approvals in more than 800 sq. mts, of the subject properties. Hence this Appeal has been presented with the above prayers.

17. This Appel was admitted by us on 21.02.2023 and directions were issued to send notices to the Respondents also a Joint Committee was constituted which submitted its Report on 06.04.2023. The relevant part of the said Report is quoted herein below: “

Observations:

- 1) As per the Appeal No.07/2023(WZ) NGT order demolition of certain structures and to restore the land to its original condition were directed. Observation for the same is tabulated as below:

Table 1.0

Sr.No	Demolition order as per NGT	Site Conditions as on date 24/03/2024
1	To demolish the pool side Restaurant in the survey nos.54/5	Restaurant roofing is dismantled, whereas the kitchen platform plinth and the supportive MS(mild steel) members are still intact on site.(site photographs attached in Annexure I)
2	Stage	Stage has been demolished.(Site photographs are attached in Annexure II)
3	Shower Room	Shower room has been demolished.
4	Fountain	Fountain has been demolished.(Site photographs are attached in Annexure III)
5	Basement below Swimming pool	The roofing of temporary extension to the swimming pool deck i.e GI sheets has been dismantled whereas the MS channels for the same and the permanent rooms below the swimming pool is still intact on site. (Site

		photographs are attached in Annexure IV)
6	Interlocking pavers on concrete base	Interlocking pavers near stag area is demolished.(Site photographs are attached in Annexure II)
7	Car Porch	Car porch is still intact on site.(Site photographs are attached in Annexure V)
8	Security Cabin	Roofing of security cabin is dismantled whereas the plinth for the same is still intact on site.(Site photographs are attached in Annexure V)
9	Cylinder Shed	As noticed that the cylinders are kept inside the MS(mild steel) grills shed and not yet demolished.

- 2) As noticed during the time of inspection, construction/demolition work was not in progress.
- 3) The STP is set up in the property and temporary shed is constructed to cover the same, which is covered on three sides and open at one side.
- 4) There exist five numbers of permanent structures/cottages in the property (as per permission granted by Inter Ministerial Committee, Govt of India on 13/08/1986 and approval by CTP letter no DJ/5120/1488/87), it was observed during the time of inspection that all five structures are permanent on ground floor and first floor and sloping roof with GI sheets on MS(mild steel) channels are erected forming a second floor which is temporary in nature.
- 5) As observed during the time of inspection that out of five permanent structures for two structures the temporary erected second floor is covered with the wood panelling forming a room which is used as a store room by the Respondent.(Photographs showing the same is attached in **Annexure VI**).
- 6) The store room is closed on all four sides with wood panels and also with ceramic tiles flooring.(Photographs showing the same is attached in **Annexure VI**).
- 7) The temporary floor erected on remaining three structures using GI sheets and MS (mild steel) channels framing is open on all four sides and it is unused.(Photographs showing the same is attached in **Annexure VII**).
- 8) The corrugated sheets with MS(mild steel) channels framing is erected to protect terrace from rain water damage/dampness, and some of the sheets are in deteriorated condition.(Photographs showing the same is attached in **Annexure VII**).

Conclusion and Recommendation

- 1) As directed by Hon'ble NGT through Appeal No 07/2023(WZ) I.A No.56/2023(WZ) & I.A.No.59/2023(WZ) dated 21/02/2023 to demolished the nine different structures in survey no 53/3 and 54/5 of village Colva Salcete Goa and to restore the land to its original condition, but as per detailed observation given in Table No 1.0, Respondent partly complied with the order.
- 2) The permitted five numbers of permanent cottages/structures are G+1 in nature with second floor constructed using the GI sheets and MS(mild steel) channels framing which is temporary in nature with parapet wall on all four sides.
- 3) The temporary second floor of the two structures are covered with wood panels and use as a store room, whereas remaining three structures/cottages temporary erected second floor is open on all four sides which is not habitable.

”

18. From the side of Respondent No. 1 reply-affidavit has been filed dated 19.02.2024, wherein it has been submitted that the original owner Mr. N.J. Rebello & others had obtained earlier permissions, and subsequently, the property was sold to Respondent No. 3, current owner of which is one Mr. Abhay Prabhu and he has renamed the hotel by the name 'Salcete Beach Resort'. The earlier owner Mr. N. J. Rebello had produced an approved plan dated 23.06.1994 issued from the office of the Chief Town Planner approving the proposed addition and alteration of the cottages from the planning point of view with certain directions at Survey No. 55/3 & 54/5, which is annexed as annexure (A) at pages 334. The Department of Science, Technology and Environment had issued NOC (CRZ Clearance) to obtain an occupancy certificate in connection with the construction carried out in the above Survey Nos. by Mr. N.J. Rebello & others on 22nd/23rd.11.2000, the same are annexed as annexure (B). The Village Panchayat of village Sernabatim, Vanelim, Colva, and Gandaolim on 15.09.2001 granted an occupancy certificate, having no objection to occupying 5 cottages/structures in survey nos. mentioned above. Respondent No. 3 had produced approvals granted by Eco Development Council dated 07.04.1987 which was signed by the Chief Town Planner, Town and Country Planning Department, Panaji, Goa for the purpose of construction, a copy of which is annexed as Annexure (D). Talathi of Colva through a report dated 18.06.2007, submitted pursuant to enquiry based on the letter received from the answering respondent, had noted therein that the West Zone Hotel was constructed with the approved plan as per the Panchayat records in Survey No. 54/5 of Colva village more than 8 years ago and the same was confirmed by Mamlatdar of Salcete through his letter dated 11.07.2007, the said Report dated 18.06.2007 is annexed as Annexure (E). The Deputy Collector, Margao through its report dated 13.11.2008 stated that there were many structures consisting of rooms, restaurants, swimming pool, etc. which was a hotel covering about 1200m² and the construction lies between 200-500m from HTL, the said Report is

annexed as Annexure (F). Talathi of Colva through its report dated 23.07.2008, clearly stated that the said property was a big hotel building with rooms and a restaurant and water sports facility. There was no new construction seen on site. The Panchanama report dated 23.07.2018 also confirmed that it was a big building of Ground+1 with many rooms, a restaurant, and an area for water sports totally covering an area of 1200 sq. mts. The Talathi of Colva, in his report also mentioned the old structure and that there was no new construction on site, The said report is annexed at annexure (G).

19. Further it is mentioned that the Expert Member of Respondent No.1 - GCZMA had conducted a site inspection on 23.11.2018 and noted that the structures on site were 5 units of G+2 and at the end of G+2 structures, there was a large elongated shed having a sloping roof in the Survey No. 55/3 of Colva Village. The Village Panchayat had issued a construction license dated 22.09.1994 for the addition/alterations of the cottages situated in Survey Nos. 55/3 and 54/5 of Colva Village. The approved plan dated 23.06.1994 shows the cottages and the swimming pool. The construction license dated 22.09.1994 is annexed as Annexure (H) and the approved plan dated 23.06.1994 is annexed as Annexure (I).

20. Further it is mentioned that in on 03.07.1998, the tourism department recommended that the project of the Respondent No. 3 was fit for loan as the hotel had valid approvals and the said recommendation is annexed at annexure (J). The Village Panchayat of Colva has transferred the House and Street Light Tax from the earlier owner Mr. N.J. Rebello and Ors. to Abhay Ramchandra Prabhu – present owner of Respondent No. 3-Resort vide letter dated 08.10.2018 which is annexed at annexure (K). The inspection report dated 24.01.2020 made by expert member makes it clear that the 5 cottages were there G+1 which had sloping roof with corrugated sheets and the covered space was found open on all sites. On the basis of the findings of the Expert Member that the said area was temporarily covered

area, opened on all sides, the same was held to be not habitable, based on which the answering Respondent decided to consider to be of temporary nature since the so-called second floor was only for the protection from rainwater and was open from all the sides, the inspection report dated 24.01.2020 is annexed as annexure (L).

21. Further it is mentioned that the answering Respondent found that letter was issued by the Chief Town Planner stating therein that the area bearing Survey No.55/3 be zoned as a Sand Dune as per the zoning plan of Colva. Answering Respondent also found that the zoning of the area had been changed from 'Sand Dune' to 'Residential' vide letter dated 16.09.1985, the letter of Senior Town Planner dated 16.09.1985 is annexed as annexure (M).

22. Further it is mentioned that the restaurant standing on Survey No. 54/3 was approved by a letter dated 21.06.1990 issued by Chief Town Planner and Member Secretary EDC, however, it was found that the Respondent 3 has relocated the approved Restaurant which is a permissible act, as it was in the nature of revision in the site plan. A copy of a letter dated 21.06.1990 issued by the Chief Town Planner is annexed as annexure (N).

23. Goa State Pollution Control Board (GSPCB) had granted requisite permission for the installation of STP, their approval dated 03.08.2019 is annexed as annexure (O).

24. Further it is mentioned that the answering Respondent noted that the Generator Shed was temporary in nature and the swimming pool had approval from the Chief Town Planner dated 23.06.1994.

25. Further it is mentioned that the answering Respondent also found that while issuing the impugned directions dated 09.12.2022, none of the above approvals had been challenged at any point of time. Hence it is stated that the impugned order passed should be upheld.

26. From the side of Respondent No. 3 – M/s West Zone Hotel alias Salcete Beach Resort filed reply-affidavit dated 16.07.2023 has been filed wherein it is submitted that Five cottages of G+1, the restaurant, S.T.P,

Generator Shed and the swimming pool were duly approved because of which Respondent had discharged the Show Cause Notice in respect of these structures, which fact has deliberately concealed by the Appellant. The answering Respondent is owner and in possession of the property survey Nos. in question and that the said property was developed by answering Respondent's predecessors-in-title in the early 1990s after obtaining permissions of the approvals from the concerned authorities which are as below: “

- i. Approval dated 07.04.1987 for construction of cottages granted by Town and Country Planning Department – Annexure A-1.*
- ii. Conversion Sanad dated 13.08.1987 – Annexure A-2.*
- iii. Development Permission dated 03.03.1992 from South Goa Planning and Development Authority Annexure A-3.*
- iv. Permission dated 23.06.1994 by Goa State Committee on Coastal Environment (GSCCE) – Annexure A-4.*
- v. Construction License dated 21.09.1994 granted by Village Panchayat of Colva – Annexure A-5.*
- vi. Plans approved by the GSCCE and VP – Annexure A-6 (Colly).*
- vii. CRZ Clearance dated 23.11.2000 from Department of Science, Technology & Environment Annexure A-7.*
- viii. Occupancy Certificate dated 15.09.2001 – Annexure A-8.”*

27. Thereafter predecessor-in-title obtained the necessary permission/NOCs to start a Hotel/Restaurant business which are as follows:

- i. NOC dated 03.07.1998 issued by Department of Tourism – Annexure A-9.*
- ii. Permission dated 22.12.2001 from VP Colva – Annexure A-10.*

28. After the purchase of the said property by the answering Respondent No.3 vide Sale Deed dated 06.07.2017, the business was renamed as ‘Salcete Beach Resort – Colva’. Thereafter the answering respondent obtained NOC dated 08.10.2018 from Village Panchayat Colva to get the House Number

and other connection in its name, a copy of the same is annexed at Annexure A-11.

29. Thereafter Village Panchayat granted NOC to conduct the hotel business in the new name of the Hotel, a copy of which is annexed as Annexure A-12. The answering Respondent also obtained Consent to operate dated 03.08.2019 from the Goa State Pollution Control Board (GSPCB), a copy of which is annexed at Annexure A-13.

30. Based on the above documents it is sought to be established that the entire development was carried out only after obtaining necessary permissions/approvals from the concerned authorities and based on that only Show Cause Notice was discharged.

31. The allegations of the Appellant that the answering Respondent flouted the said Show Cause Notice cum Stop Work Order dated 07.05.2019 and continued with the construction work is denied. With respect to the site inspection Report dated 23.11.2018 prepared by Respondent No. 1, it is submitted that the same stands vitiated because Respondent No. 3 was neither intimated nor any authorized representative of Respondent 3 was present at the site during the inspection, Therefore same should be held unreliable.

32. The Appellant is intentionally trying to mislead this Tribunal by referring to the 5 structures as G+2 structures because the height of the structures is restricted to 9 mts from the ground level. There is a temporary sloping roof above the said structures, which is installed primarily to avoid leakage and seepage of water during monsoons. The said area under the Shed is not habitable and the same has accordingly been rightly appreciated by Respondent No. 1 while passing the impugned order.

33. So far as sand dune is concerned, no sand dune has been demarcated in the said property. Even otherwise, the project of the answering Respondent was granted permission on 23.06.1994 by GSCCE and thereafter was granted CRZ clearance dated 23.11.2000 by the

Department of Science, Technology, and Environment, which were the Principal expert authorities on coastal regulations at the relevant time. Similarly the compound wall and other sheds have been in existence for many years. The Development in question was fully authorized and was in compliance with the CRZ regulations which is stands corroborated by the Report dated 04.12.2020 prepared by the Engineer, which is annexed as Annexure A-14.

34. Further it is mentioned that upon consideration of all these material documents which are placed by the answering Respondent before the Respondent 1 – GCZMA along with the Reply of the answering Respondent dated 10.12.2020 and 26.04.2022, the right conclusion has been arrived at by the Respondent No. 1, discharging the show cause notice partially and therefore this appeal deserves to be dismissed being devoid of merit.

35. The Appellant filed a rejoinder to the reply dated 04.07.2023 of Respondent No. 3 and an objection against the Joint Committee Report dated 03.05.2023, on 09.08.2023, wherein it is recorded that the basement below the swimming pool deck and the interlocking pavers are yet to be demolished. The Appellant's detailed comments on the Joint Committee/Compliance Report dated 03.05.2023 are contained in the following table below: “

GCZMA order 09.12.2022	JC - 1st Report 06.04.2023	JC 2nd report 03.05.2023	Appellants observations: to be demolished
1. Poolside restaurant	Restaurant dismantled whereas Kitchen still intact	Plinth & Supporting MS members demolished	
2. Stage	Demolished	Earlier demolished	
3. Shower room	Demolished	Demolished earlier	
4. Fountain	Demolished	Demolished earlier	
5. Basement below swimming pool	Temporary extension to pool deck dismantled whereas MS Channels & permanent rooms below swimming pool still intact	MS Channels removed Permanent Rooms below Swimming pool intact	Swimming pool and basement
6. Interlocking pavers	Near stage area demolished	Demolished earlier	Interlocking pavers from the entrance in 55/3 right upto area around swimming pool in 54/5
7. Car porch	Still intact	Demolished	
8. Security cabin	Roofing dismantled plinth intact	Plinth demolished	
9. Cylinder Shed	Not demolished	MS grill shed demolished	

36. Further it is reiterated that with respect to the structures, regarding which notice was discharged i.e. Second floor of 5 G+1 structures, Restaurant, Generator Shed and Swimming Pool, and other fresh constructions put up by Respondent No. 3, no permission was taken from Respondent No. 1, nor the same were produced on record. The Appellant is producing Google Earth satellite images of the years 2003 and 2020 to show the difference that all the renovation, repair, and reconstruction carried out were of the period subsequent to the purchase of properties survey No. 55/3 & 55/4, which is annexed at annexure A-2.

37. Further it is mentioned that the site inspection conducted on 23.11.2018 records the presence of the Site Supervisor of Respondent No. 3 on the date of the inspection, who explained the details of the construction, to the inspection team. The Supervisor contacted the proprietor of Respondent 3 to respond to certain queries put forth by Respondent 1.

Respondent 3 has not disputed the contents of the report dt. 23.11.2018 nor did he raise any other grievance in respect thereof, in any of the submission made before GCZMA.

38. At this stage we went through the said report at pages 36 and 37 of the paper book and found recorded therein at point '(vi) it is not known whether the proper permissions have been obtained from GCZMA by the builder for the said construction and/or for their repair and renovation as contended by him'. In the same Report, the following is recorded at point No. '(xii) Even the repair and renovation of structures within 200-500m of CRZ III area are not permissible without the permission from GCZMA as doing it without permission from GCZMA amounts to a violation of CRZ Regulation'.

39. Original permissions of 07.04.1997 and 23.06.1994 clearly state that the first floor of the structures was to have a sloping roof. However, not only the first floor was without a sloping roof, but a new floor was found consisting of a metal frame and a sloping roof was added over and above the first floor. If the first floor, as approved, was constructed with a sloping roof, the supposed problem of leakage would not have arisen. In any event, the current 2nd floor/ sloping roof with metal frames is not as per approved plans and is liable to be demolished.

40. It is further submitted that it is an incorrect version of Respondent-3 to say that the swimming pool and sheds are approved structures. The documents on record clearly record the existence of sand dunes on the subject property, namely GSCCE minutes of the 4th meeting dt. 27.04.1994, and the approval/NOC dt. 23.06.1994. It is also mentioned that no permission is on record in respect of the compound wall which therefore should not be treated to be an approved structure.

41. With respect to the Joint Site Inspection/Compliance Report dt. 03.05.2023 it is submitted by the answering Respondent that there was no restriction placed on this Committee by the Tribunal that their report would only be confined to the structures mentioned in the impugned order dt.

09.12.2022. The same was meant to be in the nature of a fact finding exercise to place the correct factual position in *loco* at the subject property. The Committee has disregarded the directions of this Tribunal, and has prepared reports after site inspection only to the extent of verifying compliance of the demolition as per the impugned order dt. 09.12.2022, despite several objections and requests of the Appellant to record facts about all the structures currently on the site. The Inspection Report dated 06.04.2023 as well as Inspection Report for compliance dated 03.05.2023 do not record any violations except for those that are recorded in Respondent 1's order dated 09.12.2022.

42. Further it is submitted that the additional violations/ structures can be seen in the photographs produced by the Appellant at pages 158, 159, 160, 161, 163, 164, 169, 170, 171, 172, 173, and 175 of the Affidavit dt. 30.05.2023 which includes the existence *inter alia* of the generator shed.

43. Response has been submitted by Respondent No. 3 to the rejoinder dated 09.08.2023 filed by the Appellant which is submitted on an affidavit dated 19.08.2023, wherein it is submitted that it is denied that the basement below the swimming pool deck and the interlocking pavers are yet to be demolished. This Tribunal had constituted a Joint Committee vide Order dated 21.02.2023, which has submitted its report dated 06.04.2023, *inter alia*, pointing out therein that all these structures which had been directed to be demolished had in fact been demolished, however, certain structures still remain to be demolished. Subsequent to the said inspection, Respondent No. 3 demolished the remaining structures and submitted a compliance report to the Goa Coastal Zone Management Authority vide communication dated 17.04.2023 which is annexed as Annexure (A).

44. It is further reiterated that all the structures in respect of which show cause notice was discharged, were found to be structures regarding which permission/approvals had been obtained. In compliance with direction of GSPCB to rectify the STP, the same was duly rectified and that

the Respondent No. 3 has presently valid consent to operate in respect of the subject matter resort. The Appellant appears to be intending to widen the scope of the present proceeding by alleging certain additional construction to be not permissible by saying that the Joint Committee ought to have ascertained the factual position existing on the date of inspection. The additional violations/structures, Photographs of which are sought to be relied upon by the Appellant relate to the actual site.

45. An additional Affidavit dated 07.02.2024 has been filed by the Appellant wherein it is submitted that the Appellant was filing a full-size scanned copy of the DSLR mapping plan dt 21.05.2020 as during the argument it was found to be small. She has also filed Satellite imagery/Maps/Sheets A-1 to A-11, including colour-coded analysis as **Exhibit Z Colly** which are prepared and require ground verification of the area of each of the built structures of CRZ Zone in Survey No. 54/3 and 55/3 of Respondent No.3. She has given in tabular form in sheet A-11 the position of structures which stand demolished or still exist which are reproduced herein below for sake of convenience: “

Sr. No.	Labelled structure on Google satellite image with Description	Existing Area in m2	Status as submitted vide 30/5/2023 Affidavit In Rejoinder to Joint Inspection Report of 6/4/2023	Present Status	S.No. & illegal Area
1	A1-Porch	40		Demolished	S.No- 55/3, Illegal built area= 2,365 m2
2	B1- Rooms (approved area=80x2=160)	210x3=630		470 m2 illegally extended and existing	
3	B2- Rooms (approved area=80x2=160)	180x3=540		380 m2 illegally extended and existing	
4	B3- Rooms (approved area=80x2=160)	200x3=600	Illegally extended with metal shade, photo no.2, page159	440 m2 illegally extended and existing	
5	B4- Rooms (approved area=80x2=160)	190x3=570	Illegally extended and 2 nd floor covered (photo no.3, page 160)	410 m2 illegally extended and existing	
6	B5- Rooms (approved area=80x2=160)	180x3=540	Illegally extended and 2 nd floor enclosed (photo no.4-A, page162)	380 m2 illegally extended and existing	
7	C1- Restaurant/Kitchen	180	Illegal, photo no.4, page161	180 m2 illegal Restaurant/ Kitchen	
8	D1- STP, Store	45	Illegal, photo no.5, page164	45 m2 built illegal structure	
9	D2- Generator	60	Illegal	60 m2 built illegal structure	
10	E1- Metal shed with first floor structure	90x2=180		Demolished	S.No- 54/5, Illegal built area = 650 m2
11	E2- Resting Shed	100	Illegal, photo no.10, page174	100 m2 built illegal structure	
12	F1- Swimming Pool with lower Ground Floor	550	Illegally existing, photo no.6, 6-A, 6-B, 7, 8, 9-A, 9-B page 165, 166, 167, 169, 170, 171, 172, 173	550 m2 built illegal Lower Ground Floor (Basement) with Swimming Pool above	
13	G1- Well		Illegally existing, Photo no.11, page 175	Illegally built Well	

Activate Windows

”

46. It is further mentioned that after the demolition of certain structures, there is an excess illegally constructed area of 2,365 m² in Survey No. 55/3 and 650 m² in sy. No. 54/5 of Colva Village. Therefore total excess area of illegal construction stands at 3,015 m² and an illegal well.

The Hon'ble Supreme Court in Vamika Island (Green Lagoon Resort) v. Union of India, (2013) 8 SCC 760 has observed that satellite imagery is one of the best scientific indicators to know when construction had taken place in violation of CRZ notification. Reliance was also placed on **[W.P.(C) No. 4677/1985 M.C.Mehta v. Union of India &Ors]**, whereby in order dated 30.09.2022, the Hon'ble Supreme Court emphasized the importance of using the latest technology i.e. high-resolution satellite imagery, digitalized cadastral maps to detect unauthorized/illegal constructions.

47. We have heard the arguments of learned Counsel for the Appellant, Respondent No. 1 as well as Respondent No. 3 and perused the record.

48. In this Appeal, the order dated 09.12.2022 has been assailed whereby Respondent No. 1-GCZMA has discharged the show cause notice concerning 5 cottages of G+1, the Restaurant, S.T.P, Generator Shed, and swimming pool which were found to be as per the approved plan, which is being disputed by now by the Appellant saying that there was no approval for the same and they also needed to be ordered to be demolished and that the impugned order should be set aside to that extent. Besides that during the argument, the learned Counsel for the Appellant also pointed out that the basement below the swimming pool deck as well as the Interlocking pavers on the concrete base has also not been demolished. Therefore prayer of the Appellant as on date stands to get these structures demolished and hence the impugned order according to her, needs to be set aside and fair direction be issued for demolition of the said properties/structures.

49. At this stage we had asked the Appellant's learned Counsel to show us all those structures that she has narrated above on a single map which she prays to be demolished and which are being alleged to have been

wrongly left from being demolished alleging that there were no approvals for the said constructions/structures. Then she drew our attention to page 47 of the said constructions/structures. Then she drew our attention to page 47 of the paper book which is a map, coloured map of which is annexed at page 300 prepared by the Superintendent of Survey and Land Record on the basis of a survey conducted on 21.05.2020 and this map is prepared on 09.06.2020, wherein in survey no. 55/3, 5 cottages are shown of G+2 with yellow color and with green color is shown a Restaurant. Besides that in Survey No. 54/5, there is shown the swimming pool beneath which the basement is said to have not been demolished, apart from the pavers which are shown in pink color in the said map almost all around the swimming pool also need to be demolished.

50. This map is admitted by both the parties.

51. Thereafter our attention is drawn to page 352 which is a part of written submission given by the Appellant and at point no. II is mentioned that the complaint was made by the Appellant on 09.10.2018 to Respondent No.3-GCZMA, pursuant to which an inspection was conducted on 23.11.2018 the report of which is annexed at page 36 and 38 of the paper book as 'Exhibit-C'. In this regard, our attention was drawn by the learned Counsel for the Appellant to point no. (ii) under the Conclusion and Recommendation section wherein it is recorded that the full plot area is covered with fencing and the construction of the first G+2 unit closer to the road lying towards the south side of the plot is still in progress, and thereafter attention was drawn to point no (v) wherein it is recorded that the structures constructed at the site are G+2 structures, which are not permissible within 200-500m of HTL, and therefore it is a CRZ violation. Besides that, there are two other sheds constructed with a large raised platform beyond, to accommodate a swimming pool. Having drawn attention to the above it was argued that even in this site inspection report the G+2 structures at the site were found to be within 200-500ms of the HTL in the

CRZ III area, hence they were found to be illegal and required to be demolished.

52. Thereafter our attention was drawn to the show cause notice issued to the Respondent No. 3 which is annexed at page 38 of the paper book, wherein learned Counsel for the Appellant read out the relevant portion which is that 'all proposed re-construction/ construction/ development/ repair between 200mts to 500mts of the HTL from sea and 100mts from the river, and those permissible activities, require the prior approval of the GCZMA under the CRZ Notification, 2011'. Further, it is mentioned in the show cause 'alleged illegal construction is highly detrimental to the Coastal ecosystem/ riverine ecosystem'. Therefore it was resolved that (You) Respondent No.3 have not obtained prior approval of GCZMA for the purpose of alleged construction as required under CRZ notification 1991/2011.

53. Having drawn our attention to the above, this is urged by the learned Counsel for the Appellant that this notice itself makes it clear that the GCZMA itself is of the view based on the inspection report dated 23.11.2018 that the said structures of G+2 were unauthorized.

54. The learned Counsel for the Appellant also drew our attention to the report dated 04.02.2021 which is annexed at pages 48 to 52 and is conducted by the expert member of Respondent No. 1 and therein at para 5, our attention is drawn to the approved structures and offending structures/violations in tabular form as below:

“

Sry. no.	Approved Structures	Offending Structures/Violations Noted
54/5	1. Swimming Pool ³ .	1. Stage. 2. Shower room. 3. Basement below swimming pool deck. 4. Restaurant (pool side). 5. Fountain. 6. Interlocking pavers on concrete base (part).
55/3	1. Five G+1 cottages ⁴ (each having approx. 106 m ² plinth area).	1. Interlocking pavers on concrete base. 2. STP ⁵ 3. Generator Shed. 4. Restaurant structure. 5. Second floor of five G+1 structures. 6. Car Porch. 7. Security cabin.

”

55. During the argument it was apprised by the learned Counsel for the Appellant that as on date out of the above offending structures shown in survey no. 54/5, the structure shown at numbers 1, 2, 4, and 5 have been demolished while the remaining structure i.e. Basement below the swimming pool and Interlocking pavers on the concrete base (part) still exist on the site. Similarly, with respect to offending structures at Survey No. 55/3, it is stated by her that as on date the Car Porch at serial no. 6 and the Security cabin at serial no. 7 have been demolished but Interlocking pavers on the concrete base, STP, Generator Shed, Restaurant Structure, and Second floor of five G+1 structures still remain, which need to be demolished.

56. Thereafter she drew our attention to page 59 of the paper book which is a letter written by the Member Secretary, Southern Planning & Development Authority dated 17.12.1987 addressed to the Chief Town Planner & Country Planning Department, Panaji-Goa regarding the construction of 5 cottages on S.No. 55/3 at Colva, wherein it is recorded ‘it is noticed that the plot in question is zoned as sand dunes as per the zonal plan of Colva’.

57. Thereafter attention is drawn to page 10 para 26 of the pleading in which it is recorded that Ground+1 structures as permitted, were required to have a sloping roof, although there was found to be a flat roof on these

structures but for the removal of the same no order was passed with respect to the flat roofs which is said to be erroneous.

58. Thereafter she drew our attention to page 123, which appears to be information obtained under RTI but the same was found to be very vague therefore we told the learned Counsel for Appellant that the same cannot be taken into consideration by us.

59. Thereafter she drew our attention to page 121 which is a order dated 30.06.1988 issued by Member Secretary, Southern Planning and Development Authority wherein S.No. 55/3 only finds mention of the Colva Village. Having drawn our attention to this, learned Counsel for the Appellant argued that it does not contain S.No. 54/5, therefore she states that in the survey number 54/5, there is shown located swimming pool which cannot be held to have been given permission for being constructed as per this order.

60. Thereafter she drew our attention to page 156 para 8 which is part of the affidavit filed in the rejoinder to the site inspection report dated 06.04.2023 wherein it is recorded that, despite the office Memorandum dt. 23.09.1988 providing that groundwater must not be tapped for any purpose for the complex as there is a likelihood of ingress of saline water and consequent pollution of groundwater; the construction must not be more than 9 meters high and must not go beyond tree top line in the vicinity. The construction must, at the maximum be of two floors – ground and one upper floor; The construction should be of light material with sloping roofs in local architectural style; Sand from the sand dunes in the coastal stretch must not be removed for any purpose, the Respondent 3 has gone ahead with the construction and destroyed the remaining part of the sand dune in survey no. 55/3 and 54/5 by undertaking several concrete developmental works including the construction of a well on a terraced part of the sand dune and has been using a pump to draw water for commercial use. The five structures were also found to have flat roofs.

61. Thereafter our attention is drawn to page 183 which is an office memorandum dated 23/26.09.1988 which is the same excerpt, which we have already produced above.

62. Thereafter she drew our attention to page 175 which is a well shown on a terraced sand dune. Thereafter our attention is drawn to pages 310-311 which is a Google Earth image from Feb. 2010 to Jan. 2017 in order to show that the structures that are being said to have been illegally built emerged gradually between the period 2010 to 2022 without any valid permission.

63. Thereafter from the side of GCZMA our attention is drawn by learned Counsel to pages 313-330, which is a reply affidavit on behalf of Respondent No.1 GCZMA which begins from page 313 and ends at 323, wherewith all the permission are annexed in the form of annexures. During the argument, Learned Counsel for Respondent 1 had drawn our attention to pages 324 and 325 which is an approval dated 23.06.1994 granted by Chief Town Planner and Member Secretary GSCCE to the predecessor of the Appellant Mr. N.J. Rebello and Ors in respect of addition, alteration of the cottages in S.NO 55/3 and 54/5, village Colva, Taluka Salcete. Other permissions were also annexed as annexure from pages 326 to 349 of the paper book.

64. Thereafter the Learned Counsel for Respondent No.3 submitted that the Appeal filed by the Appellant deserves to be dismissed as all the permissions have been obtained by Respondent 3.

65. From the side of Respondent No. 3, our attention is drawn to pages 188-200 which is their reply affidavit. Thereafter the learned Counsel took us through the impugned order and took us to page no. 141 which is a report of Joint Site Inspection dated 06.04.2023 and drawing our attention to it, it is argued that in compliance with the impugned order demolitions were made of the structures in question, and the details of the same are given in the table below: “

Sr.No	Demolition order as per NGT	Site Conditions as on date 24/03/2024
1	To demolish the pool side Restaurant in the survey nos.54/5	Restaurant roofing is dismantled,whereas the kitchen platform plinth and the supportive MS(mild steel) members are still intact on site.(site photographs attached in Annexure I)
2	Stage	Stage has been demolished.(Site photographs are attached in Annexure II)
3	Shower Room	Shower room has been demolished.
4	Fountain	Fountain has been demolished.(Site photographs are attached in Annexure III)
5	Basement below Swimming pool	The roofing of temporary extension to the swimming pool deck i.e GI sheets has been dismantled whereas the MS channels for the same and the permanent rooms below the swimming pool is still intact on site. (Site

		photographs are attached in Annexure IV)
6	Interlocking pavers on concrete base	Interlocking pavers near stag area is demolished.(Site photographs are attached in Annexure II)
7	Car Porch	Car porch is still intact on site.(Site photographs are attached in Annexure V)
8	Security Cabin	Roofing of security cabin is dismantled whereas the plinth for the same is still intact on site.(Site photographs are attached in Annexure V)
9	Cylinder Shed	As noticed that the cylinders are kept inside the MS(mild steel) grills shed and not yet demolished.

66. The Joint Committee has concluded as below along with the recommendations:

“1) As directed by Hon’ble NGT through Appeal No 07/2023(WZ) I.A No.56/2023 (WZ) & I.A.No.59/2023 to demolish the nine different structures in survey no 55/3 and 54/5 of village Colva Salcete Goa and to restore the land to its original condition, but as per detailed observation given in Table No 1.0, Respondent partly complied with the orders.

2) The permitted five numbers of permanent cottages/ structures are G+1 in nature with second floor constructed using the GI sheets and MS(mild steel) channels framing which is temporary in nature with parapet wall on all four sides.

3) The temporary second floor of the two structures are covered with wood panels and use as a store room, whereas remaining three structures/ cottages temporarily erected second floor are open on all four sides which is not habitable.”

67. Thereafter our attention is drawn to page 28 wherein it is recorded in the impugned order dated 09.12.2022, “further to the query if the structure was erected on a Sand Dune. The same was verified from the Sand Dune mapping carried out by NCZCM and it was observed that the Sy. No 54/5 of Colva Village for which Show Cause Notice was issued did not come within the area identified as the Sand Dune area”.

68. Thereafter he read out the whole of the impugned order from page 31 to 32, the relevant portion of which is produced herein below:

“In view of the above the Respondent West Zone Hotel alias Salcette Beach Resort has obtained some approvals and permissions from this erstwhile Authority which has been discharged however, the Authority discharges the Show Cause Notice with regards to the 5 cottages of G+1,

the Restaurant, S.T.P, Generator Shed and the swimming pool as the same are as per the approved plan.”

69. Having drawn attention to the above and having read the same it was emphasized by him that the GCZMA had rightly arrived at the conclusion that all the approvals from the appropriate Authority have been taken by Respondent No. 3 with respect to the structures now being objected by the Appellant and therefore show cause notice regarding the same was rightly discharged.

70. Thereafter our attention is drawn to page 209 which is the permission granted for construction of 5 cottages in sy. No.55/3 by Chief Town Planner to the predecessor of Respondent No. 3. At page 210 attention is drawn to the Sanad Schedule-II which also pertains to sy.no 55/3 of Colva Village. By this document, it appears that the said Survey No. was converted for residential use.

71. Thereafter attention is drawn to pages 337 and 338 which are valid construction licenses issued for the construction of the addition and alterations of cottages on sy.no 55/3 and 55/4 at Colva Village, Salcete Taluka issued by Village Panchayat Sernabatim, Vanelim, Colva & Ganaulim, wherewith there is map annexed and therein 5 structures of cottages appear to be shown and it appears that these cottages were permitted to be constructed under this permission on 21.09.1994.

72. Thereafter our attention is also drawn by the learned Counsel for Respondent 3 to page 215 of the paper book, which is a copy of the same document which we have cited above at page 338. Attention is also drawn to page 219 of the paper book which is the No Objection certificate to obtain occupancy certificate issued by the Director/Jt. Secretary, Department of Science, Technology & Environment to the predecessor of Respondent 3 dated 23.11.2000. Attention is also drawn to page 220 which is an issue of the occupancy certificate by the Secretary Village Panchayat Sernabatim,

Vanelim, Cova & Gandaulim dated 15.09.2001 granted to a predecessor of the Respondent 3.

73. Based on the above documents it was argued that structures which are objected to by the Appellant were raised after getting permissions from the appropriate authorities, therefore this appeal deserves to be rejected.

74. In rebuttal learned Counsel for the Appellant reiterated that the construction being opposed by the Appellant was made in 2020 without permission which is evident from the satellite imagery at page 277 and 278 of the paper book which clearly depicts the change.

75. After having heard the learned counsel for the parties and perused the record, we are of the view that to arrive at the right conclusion with respect to this Appeal we have to decide the following issues:

(I) Whether 5 structures of G+1 and the Restaurant, which are shown in survey no. 55/3, were approved as per plan in terms of the area, roof, and temporary second floor?

(II) Whether the basement of the swimming pool located in survey no. 54/5 and the pavers by the site of the swimming pool have been demolished or not?

With respect to issue no (I): As per this issue we have to decide as to whether 5 ground + 1 structures as well as the restaurant shown in 55/3 were made as per the approved plan.

76. In this regard we have to submit that the learned Counsel for the Appellant is disputing that there was no such approval given for these structures while Respondent 3 has urged that, there was appropriate approval for these structures, and for this, he has submitted to us a survey map annexed at page 218. Since the survey map at pages 217 and 218 (Which were not legible) but a legible copy of these maps are presented to us which are annexed at pages 387 and 388. In these survey maps, the predecessor of the Respondent was granted permission to build 7 cottages (5

in survey no 55/3 and 2 in 54/5), each of which was to consist area of 106.05 m² and each structure was to contain a basement, ground floor, and first floor with a sloping roof. It appears that Respondent 3 instead of the sloping roof had gone to build a flat roof which requires special measures for protection from rain and because of that only, laying of that sloping roof at the second floor appears to have been constructed which is now being stated by the Respondent 3 to be not habitable and of temporary in nature and on that premise, it is being said that that the same should not be treated to be an additional floor and hence no violation should be treated to have been committed at their end in this regard, although from the side of the Appellant the said construction of the second floor is being opposed as the same was never permitted by any Authority. In view of these facts, we are of the view that it was bounden duty of the GCZMA to ensure that the construction of the 5 cottages was done strictly in accordance with the approval dated 23.06.1994 or not otherwise. Since the said approval shows only the basement plus the ground floor plus the first floor only with a sloping roof, any difference from the said approval, if was found to be there, on that very ground it ought to have been ordered to be demolished, being found to be not in consonance with the approved plan. We do not find this approach to have been adopted by the GCZMA while passing the impugned order, therefore in our estimation, this could require reconsideration by GCZMA.

77. It appears that as per the approved plan dated 23.06.1994, there were 2 cottages permitted to be built in survey no. 54/5 also but the same do not appear to have been built by the Project Proponent/ Respondent 3 predecessor-in-title.

78. Now we would take into consideration the swimming pool which is shown to be lying in survey no. 54/5. The said swimming pool was approved by the Chief Town Planner and Member Secretary GSCCE on 23.06.1994 as per the map at page no.217 and pursuant to this approval only, it appears

that Respondent No.3/ Predecessor-in-title has constructed this swimming pool. The construction of pool is being opposed by the Appellant on the ground that there was no permission obtained and that the permission which was obtained, was confined to only the construction of 5 cottages in survey no. 55/3 as per the Chief Town Planner having written to the Respondent's Predecessor-in-title Mr. Rebello on 07.04.1987 which is available at page 209 of the paper book. We are of the view in this regard that since the approval granted by the GSCCE as well as the Town and Country Planning Department is of subsequent date, the same should be treated to have been validly granted.

79. Now we have to see whether the Restaurant which is found to have been constructed in survey no. 55/3 is validly constructed. In this regard, Chief Town Planner and Member Secretary EDC have granted permission for the same on 21.06.1990 at survey no. 55/3 Colva, which is annexed at pages 347 to 348. So this construction of the said Restaurant is also being found by us to be valid as per this approval/permission.

80. We also found that the Goa State Pollution Control Board (GSPCB) has granted Respondent 3 permission to set up STP as per the Consent to Operate dated 03.08.2019, therefore the same should also be treated to be valid construction.

81. With respect to the Generator shed, the same is found to be, in our estimation, of temporary in nature, therefore the same should not be treated to be a violation.

82. The main concern that has arisen in our mind pertains to the fact that Respondent 3 purchased the property in question from the earlier owner on 06.07.2017 through a sale deed, so what construction/ Re-construction/ repair of 5 G+1 structures, restaurant and swimming pool was carried out by him after the purchase in the year 2017, and whether any permission for the same was taken or not from GCZMA? In this regard, we do not find any clear response from the Respondent No. 3 nor from the side of the GCZMA.

From the side of the Appellant, it has been tried to be shown that the satellite images which are annexed at pages 304-311 would indicate that the construction has been done from 2010 to 2020. Therefore, it is clear that some construction may have been done after purchase of the property by the present Respondent 3, but no such permission of the said period has been presented before us. This aspect does not appear to have been considered by the GCZMA while passing the impugned order. Therefore we are inclined to allow this appeal.

83. In the result we pass the following order :

(I) The Appeal is allowed with respect to the discharging of show cause notice issued to Respondent No. 3 regarding 5 cottages of G+1, Restaurant, Generator shed and Swimming Pool being found by the Respondent no.1 - GCZMA to have been constructed as per approval, as the same are not found by us to have been properly considered by the GCZMA, because it was required on the part of the GCZMA to ensure as to when these structures were repaired/renovated/reconstructed after the purchase of the property in question by the Respondent no. 3 in year 2017? If yes, whether prior permissions were taken by the Respondent No. 3 from GCZMA or not.

(II) Therefore we direct that Respondent no. 1 – GCZMA shall re-hear the matter after fresh site inspection and after giving opportunity of hearing to the parties concerned in this regard and decide the issues involved afresh within a period of two months from the date of uploading of this Judgment.

(III) In view of above, we are not inclined to give any concrete finding on the issues framed in para 75 of this Judgment.

(IV) No order as to costs.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

May 27, 2024
APPEAL NO.07 OF 2023 (WZ)
PJB