

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

[Through Physical Hearing (with Hybrid Option)]

**ORIGINAL APPLICATION NO. 15 OF 2023 (WZ)
WITH
I.A. NO.159/2023 IN O.A. NO.15/2023 (WZ)**

Alchemist Asset Reconstruction Company Ltd.,
Through Mr. Akshat Sharma,
Authorized Representative,
A-270, 1st and 2nd Floor,
Defence Colony, New Delhi – 110 024

.... Applicant

Versus

- 01. Goa Coastal Zone Management Authority,
Through its Member Secretary,
4th Floor, Dempo Towers,
Patto, Panaji, Goa – 403 001
- 02. M/s Dream Discovery,
Through Mr. Vijay Gokuldas Komarpant,
Agonda, Canacona, Goa – 403 702
- 03. Mr. Selso Fernandes
s/o Late Mr. Pedro A. Fernandes,
Aged about 60 years,
R/o House No.439, Val Aframento Agonda,
Taluka Canacona, Goa
- 04. Ms. Concecao Fernandes
w/o Mr. Selso Fernandes,
Aged about 53 years,
R/o House No.439, Val Aframento Agonda,
Taluka Canacona, Goa

....Respondents

APPEARANCE :

Applicant : Mr. Nikhil Nayyar, Senior Advocate, instructed by
and with Mr. Karan Batura, Advocate

Respondents : Ms. Supriya Dangare, Advocate for R-1
Mr. Saket Mone, Advocate with Mr. Jatin Ramaiya,
Advocate for R-2
Mr. Shivan Desai, Advocate along with
Mr. Shivshankar Swaminathan, Advocate for
R-3 and R-4

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

**Reserved on : 24.11.2023
Pronounced on : 03.01.2024**

JUDGMENT

01. The applicant – Alchemist Asset Reconstruction Company Ltd., through its authorized representative Mr. Akshat Sharma, has filed this Original Application under Sections 14 and 15 read with Section 18 of the National Green Tribunal Act, 2010, alleging that the applicant is an Asset Reconstruction Company, which has acquired the debts from the original lenders of a company called ‘Dugal Projects Development Company Pvt. Ltd.’ (“DPDCL”, for short) (its earlier name being “Elbee Dugal Engineering Company Pvt. Ltd.”) and is now the sole financial lender of DPDCL with whom all the parcels of land aggregating 3,58,814 sq.mtrs at village Agonda, Canacona, Goa, which are now owned by DPDCL, are mortgaged. In the year 1986, SIMA Hotels and Resorts Ltd. (“SHRL”, for short)/Principal Borrower had taken financial assistance from Industrial Financial Corporation of India (IFCI), Industrial Development Bank of India (IDBI) and Industrial Credit and Investment Corporation of India (ICICI), for the purposes of setting up a five-star category beach resort in Goa. The land on which the hotel project had to be set up was purchased by DPDCL in its own name and was leased to SHRL vide lease-deed dated 25.11.1987. The said land was owned by DPDCL, which was mortgaged to the lenders and the original sale-deeds of the said land were deposited with the lenders by Mr. G.S. Dugal, Director of both SHRL and DPDCL by way of execution of a registered Memorandum of Entry (MoE). The said land owned by DPDCL and mortgaged to lenders comprised of the survey numbers which are mentioned in paragraph No.3.4 of the application, totally admeasuring 3,58,814 sq.mtrs., situated at village Agonda, Taluka Canacona, Goa. The said entire land of 3,58,814 sq.mtrs. comprised of also Survey No.100/10, admeasuring 5350 sq.mtrs, out of which DPDCL owned 5300 sq.mtrs., which was acquired by DPDCL vide registered sale-deed dated 28.06.1982 (Annexure-A2). This property has been referred by the applicant in subsequent

paragraphs as “demised property”, which is a beachfront property abutting Agonda beach, which is designated turtle nesting site. It is on this land that the construction and commercial operations are carried out by respondent No.2 – M/s Dream Discovery. On 04.04.11.1987, a loan agreement was entered into between the above mentioned lenders and the Principal Borrower (SHRL), wherein DPDCL was made a party as Corporate Guarantor, vide Corporate Guarantee Deed dated 06.11.1987, executed by DPDCL in favour of the lenders. On account of continuous defaults in payment of outstanding amounts, the above-named lenders filed a Civil Suit for recovery before the Hon’ble High Court of Bombay being Civil Suit No.2654 of 1990 against SIMA as well as DPDCL, wherein vide orders dated 08.07.1991 and 24.07.1991, a Court Commissioner was appointed to take possession of the properties of DPDCL situated in Agonda, Canacona, Goa, including the demised property. This entire property owned by DPDCL, including the demised property, became *custodia legis*, copies of the said orders of the Hon’ble High Court of Bombay are annexed as Annexure-A3 colly.

02. Further it is mentioned in the application that subsequent to the constitution of Debt Recovery Tribunal (DRT), the said civil suit was transferred to it in the year 2002 and was re-numbered as Original Application No.224 of 2002. In the year 2011, the applicant – ARCIL (assignee of ICICI) filed a separate recovery suit numbered as Original Application No.33/2002. Thereafter, on 06.05.2011, a common decree was passed by the DRT in the above two cases in favour of the lenders and against the principal borrower – SHRL as well as its guarantor DPDCL and consequent to that, on 22.12.2011, a Recovery Certificate was issued against the principal borrower and DPDCL. Over the course of time, the lenders i.e. IFCI, IDBI and ICICI assigned their respective debts to the applicant, details of which, as are mentioned in the application, are as follows:

Sr. No	Date of Assignment	Original Lender/ Assignor	Assignee
1.	13.10.2014	IFCI Limited	AARC
2.	26.02.2016	Asset Reconstruction Company (India) Ltd. (Assignee of ICICI)	AARC
3.	24.03.2017	IDBI Bank Limited	AARC

In pursuance of the said assignments, the applicant became the sole secured financial creditor of SHRL and DPDCL, having exclusive charge on the entire assets/properties owned by the said company, including the land situated in Survey No.100/10.

3. Further it is mentioned that in view of the persistent failure on the part of DPDCL to repay the outstanding dues, the applicant in its capacity of being a sole lender filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), seeking initiation of Corporate Insolvency Resolution Process (CIRP) of DPDCL which was registered as C.P. No.2527(IB)/MB/2018, which was admitted and vide order dated 08.05.2019, Mr. Arunava Sikdar was appointed as Interim Resolution Professional (IRP). Copy of the order dated 08.05.2019 is annexed as Annexure-A5). Later on, the said IRP was confirmed by the Committee of Creditors (CoC) of the DPDCL as Resolution Professional (RP). Feeling aggrieved by the said order dated 08.05.2019, the then suspended Directors of the DPDCL preferred an appeal before the National Company Law Appellate Tribunal (NCLAT), New Delhi being Company Appeal (AT) (Insolvency) No.681 of 2019. In the meantime, in pursuance of discharging its duties as prescribed under the IBC, the then Resolution Professional of DPDCL filed an application before the Hon'ble High Court of Bombay bearing Court Receiver's Report No.121 of 2019 in Suit No.2654 of 1990 inter alia seeking handover of physical possession of the property of DPDCL from the Court Receiver to himself to enable him to proceed with the Corporate Insolvency Resolution Process (CIRP) under the provisions of IBC, 2016. The

Hon'ble Bombay High Court passed following order on 09.07.2019 read with order dated 10.07.2019:

“(i) The Court Receiver shall handover the subject property to the Resolution Professional who exercises control over the assets of Dugal Projects Development Co. Pvt. Ltd., the subject property being part of these assets. This shall be done within a period of two weeks from the date of this order.

(ii) The remaining questions framed by the Court Receiver are kept open to be answered in an appropriate case.

(iii) The Court Receiver is discharged subject to payment of cost and charges of refund if any. The cost of this Report to be borne by the alchemist ARC to whom the debts of the Plaintiffs have been assigned. The Court Receiver Report is disposed of in the above terms.”

4. According to the applicant, thereafter, the Resolution Professional (RP) issued a letter dated 12.07.2019 to respondent No.1 – GCZMA to bring to their notice about commencement of Corporate Insolvency Resolution Process, a copy of which is annexed as Annexure-A7. On 23.07.2019, the Resolution Professional took over the possession of the land at Agonda village, Canacona, Goa, admeasuring 3,58,814 sq.mtrs. from the Court Receiver as per order dated 10.07.2019 passed by the Hon'ble High Court of Bombay, including the demised property bearing Survey No.100/10. A copy of the site report for taking physical possession by the then Resolution Professional is annexed as Annexure-A8.

5. Further it is mentioned that the applicant continued to be aggrieved by encroachment and illegal erection and commercial operations being run by the unauthorized persons in the properties owned by the applicant in village Agonda, Canacona, in blatant violation of CRZ Regulations in force. One such encroachment and illegal construction and commercial operation was of a resort located in Survey No.101/1 and 101/3 of village Agonda, regarding which the applicant filed Writ Petition No.184 of 2021 before the Hon'ble High Court of Bombay at Goa against the illegally constructed structures in the said properties. The violators therein undertook to

demolish the said illegal construction themselves. Hence, by order dated 91.03.2022, the Hon'ble High Court of Bombay at Goa in the said Writ Petition, made the following observations:

“3. The photographs indicate that debris and construction material is still at the site. This has to be cleared forthwith, because, all concerned must remember that this is an ecologically sensitive area where such construction should not have even come up in the first place. The entire process to put up such construction and thereafter demolishing them is itself a serious concern of environmental degradation.”

Copy of the order dated 01.03.2022 is annexed as Annexure-A9.

6. It is further mentioned that in the meantime, final judgment and order dated 07.03.2022 came to be passed by NCLAT in Company Appeal(AT) (Insolvency) No.681 of 2019 filed by the applicant against Corporate Debtor, setting aside the order dated 08.05.2019 passed by the NCLT, holding that the application under Section 7 filed by the applicant was beyond the period of limitation as provided in IBC and hence, could not have been admitted by the Adjudicating Authority. A copy of the said order dated 07.03.2022 is annexed as Annexure-A10. The applicant preferred an appeal against the said order before the Hon'ble Supreme Court by way of Civil Appeal No.2786 of 2022 wherein by order dated 18.04.2022, the Hon'ble Supreme Court passed an order to protect the rights and interest of the applicant, ordering, *“Status quo, as on today, shall be maintained in the meanwhile.”* A copy of the said order dated 18.04.2022 is annexed as Annexure-A11.

7. By virtue of the above order of the Hon'ble Supreme Court, the physical possession of the property and the management of DPDCL continued to remain with the erstwhile Resolution Professional until the disposal of the said appeal. In the meantime, the violators in the case of property bearing Survey No.101/1 and 101/3 of village Agonda, again applied for permission for construction from respondent No.1 – GCZMA. Surprisingly, respondent No.1 too granted permissions dated 09.05.2022

and 11.05.2022 along with an addendum dated 20.05.2022 to the permissions and the violators began reconstruction of the illegal construction therein. A copy of the orders dated 09.05.2022 and 11.05.2022 along with addendum dated 20.05.2022 are annexed as Annexure A12 colly.

8. Pursuant to the said order, the applicant approached this Tribunal by filing two appeals i.e. Appeal No.22 of 2022 and Appeal No.23 of 2022 against the order and permission passed by respondent No.1 and vide common order dated 05.09.2022, this Tribunal quashed the impugned order and permission dated 09.05.2022 and 11.05.2022, holding that since the impugned construction therein was in NDZ area, no permission could have been granted. A copy of the said order dated 05.09.2022 is annexed as Annexure-A13. The said order passed by this Tribunal was challenged before the Hon'ble Supreme Court, which, vide its order dated 07.11.2022, directed to maintain *status quo* in the matter. A copy of the said order dated 07.11.2022 is annexed as Annexure-A14.

9. The applicant, in the present case, has expressed concern with respect to the violation being carried out by respondent No.2 – Mr. Vijay Komarpant, respondent No.3 – Mr. Selso Fernandes and respondent No. 4 - Ms. Concecao Fernandes in collusion with each other by illegally constructing multiple illegal structures and constructing a Hotel/Resort complex admeasuring approx.. 35,000 sq.ft., which is presently run in the name and style “Dream Discovery Sea View Resort and Beach Café”, which is a full-fledged resort with a Bar and restaurant and open area with beach beds. Copies of images (screenshots) of the said illegal structures available online, are annexed as Annexure-A15 colly.

10. It is further mentioned that the record would reveal that by sale-deed dated 28.06.1982, one Mrs. Janaki Devappa Dessai and four other persons collectively sold their 1/3rd shares in several properties bearing Matriz No.82,84, 85, 87 and 89 of the Taluka Revenue Office, Canacona which correspond to Survey No.100/14 and 100/10, together admeasuring 7200

sq.metres to “Elbee Dugal Engineering Co.Pvt. Ltd.” The said sale-deed does not mention existence of any structure or any house existing thereon, rather only describes the property as beach property with some trees and plants thereon. By virtue of this sale-deed, DPDCL became the owner of 5300 sq.mtrs out of total 5350 sq.mtrs. of the demised property and the said entire area of 5300 sq.mtrs of land in the demised property is mortgaged exclusively in favour of the applicant. On the remainder 50 sq.mtrs. of the demised property, only one small structure stood occupied by one Ms. Maria Fernandes, which is reflected from the survey record and Forms I and XIV in respect of Survey No.100/10. Said Ms. Maria Fernandes survived by her son respondent No.3 – Mr. Selso Fernandes and daughter respondent No.4 Ms. Concecao Fernandes. For the first time, in the month of June, 2022, the applicant noticed a huge structure on the beachfront side of the demised property, which houses a full-fledged Bar and Restaurant by name “Dream Discovery Beach Café” with multiple levels and along side open area with beach beds, which were let out to tourists. Behind the said structures were additional structures which at the first instance were not clearly visible from the beach side. These structures are all permanent structures constructed using RCC slabs and cement base. The said illegal structures have also encroached portion of the beach by construction of permanent cemented and tiled platform and steps. The structures were enclosed by construction of permanent compound wall using RCC and laterite stones, on the periphery of the demised property. In order to construct the said structure, respondent No.2 appears to have cut sand dunes and filled and leveled the land in the demised property. On making enquiry, the applicant came to know that respondent No.3 Selso Fernandes was issued a letter/permission dated 04.04.2017 (which has been prayed to be quashed in this O.A.) by respondent No.1 – GCZMA, granting permission for reconstruction of house No.439 for the area admeasuring 193.48 sq.mtrs. in the demised property. A similar letter was issued for another construction bearing No.438 located in

the said demised property, admeasuring 193.48 sq.mtrs. Copy of the said letter/permission dated 04.04.2017 is annexed as Annexure-A17. (It appears that permission has been granted to raise construction to respondent Nos.3 and 4 and not to respondent no.2). The total area of the so called two structures would stand at 386.96 sq.mtrs. The present structures standing on the site are huge one. In fact, there never existed two structures in that demised property. This fact clearly proves that the respondents were working hand in glove and malafidely. When the land available on the site was only 50 sq.mtrs., how could the respondent No.2 obtain permission for construction of two structures 193.48 sq.mtrs. each.

11. It is further mentioned that the applicant made a complaint to respondent No.1 vide letter dated 08.06.2022 about the said illegal and unauthorized construction carried out in the demised property. A copy of the said letter dated 08.06.2022 is annexed as Annexure-A18. But no action was taken in the matter. Upon further enquiry made by the applicant, he came to know the modus operandi of respondent No.2 along with respondent Nos.3 and 4, who had given effect to the present project. In fact, respondent Nos.3 and 4 had leased the land to respondent No.2 i.e. the so called house Nos.438 and 439 in the demised property. A copy of the lease-deed dated 23.09.2020 is annexed as Annexure-A19. The said lease-deed mentions two structures bearing house Nos.438 and 439, admeasuring 193 sq.mtres each along with a well between the said houses, along with 100 sq.mtrs shed which is for a period of seven years from 01.10.2034 to 30.09.2041 for the rental of Rs.12,50,000/- every year. It is submitted that it may be noted that a lease-deed is executed in the year 2020 and respondent No.2 has leased out so called area for the future period of 01.10.2034 to 30.09.2041. Hence, it appears to be suspicious and smacks of malice. The said lease-deed makes a reference to previous lease-deed dated 12.09.2016, a copy of which could not be obtained by the applicant. Pursuant to the execution of the lease-deed dated 12.09.2016, the lessee claims to have invested an

amount of Rs.3,00,00,000/- in renovating, reconstructing and repairing the houses and that the lessors acknowledge the same. The lease-deed dated 23.09.2020 makes a reference to the letters dated 04.04.2017 from respondent No.1 granting permission for reconstruction of house Nos.438 and 439, but mischievously state that the said permissions were communicated to the lessee (respondent No.2) when in reality they were addressed to the lessor i.e. respondent No.3. Further it is mentioned that when the applicant examined the minutes of the 144th meeting of respondent No.1 – GCZMA held on 21.03.2017, it is found that it decided to grant the permission of reconstruction of house to respondent No.3, observing that respondent No.3 was a member of the traditional toddy tapper community, who on the pretext of reconstruction of his dwelling unit, applied for reconstruction of his house. This was done by way of two applications, one for the structure bearing House No.438, admeasuring 217.6 sq.mtrs and another for the structure bearing house No.439, stated to be admeasuring 193.48 sq.mtrs.

12. Further it is mentioned that respondent No.3 submitted house tax receipts from 1980s and a DSLR plan showing existence of an old house but the applicant disputes the existence of any two structures in the demised property and has a reason to believe that respondent No.3 has passed off one old structure as two distinct structures and has made above mentioned two applications. The veracity of the house tax receipts is also disputed by the applicant. This fact has been suppressed by respondent No.1 – GCZMA that the so called two structures were already leased out to respondent No.2 for the purpose of starting a resort/restaurant and other commercial operations. The said structure was never going to be used for residence of respondent No.3 who got the approval for reconstruction of existing structure, on the pretext of being a member of the traditional coastal community. The minutes of 144th meeting of respondent No.1 – GCZMA would reveal that respondent No.3 had previously applied for permission of

reconstruction of the so called two structures proposing reconstruction by addition of a ground + first floor structure, which came to be rejected in 137th meeting of respondent No.1. In that very meeting, upon inspection of the demised property by the then Expert Member, it was found that the demised property was located in the No Development Zone (NDZ) i.e. within 200 mtrs from the HTL. Respondent No.1 thereafter finally held that since a comprehensive plan as required under para 8 III A(ii) of the CRZ Notification is not yet formulated and approved by the MoEF, the Authority/respondent No.1 decided that the application for proposed construction of first floor on existing round floor could not be considered. Copies of the minutes of 144th and 137th meetings of respondent No.1 are annexed as Annexure-A20 colly.

13. Respondent No.3 subsequently modified the plan and applied for reconstruction of only ground floor structure by maintaining the plinth and the same came to be mechanically granted by respondent No.1, purportedly under para 8 III A(ii) of the CRZ Notification, wherein reconstruction of existing authorized structure not exceeding FSI, plinth, density and reconstruction of dwelling units of traditional coastal communities including fisherfolk could be permitted between 100 and 200 meters from the HTL along the seafront.

14. It is mentioned that Respondent No.1 failed to ascertain whether there was in fact any existing authorized structure in the demised property and whether it was being used as a dwelling unit, whether the structure was between 100 and 200 metres from the HTL along the seafront, whether such proposed reconstruction was in accordance with comprehensive plan as mandated by the CRZ Regulations. The said structures are right on the beach and within the closest proximity to the turtle nesting site on the Agonda Beach and within less than 100 mtrs from the HTL, as brought out in the report of Survey carried under the instruction of the applicant. At such place, no permission for reconstruction even of dwelling units of

traditional coastal communities could be granted by respondent No.1 under para 8 III A(ii) of the CRZ Notification in any case.

15. It is further mentioned that in the light of the contents of the lease-deed dated 23.09.2020, the minutes of 137th and 144th meetings of GCZMA and the permission granted on 04.04.2017 would indicate the modus operandi of the respondents that respondent No.3, being a member of traditional coastal community, got passed off their old structure, which could in any case not have admeasured more than 50 sq.mtrs., as two separate structures, admeasuring over 400 sq.mtrs and obtained permission from respondent No.1 – GCZMA and availed permission for reconstruction from respondent No.1 with two applications. Respondent No.3 had already leased out the so called structures to respondent No.2 for running the business of Bar and Restaurant and Resort. After availing the permission, respondent No.2, who is not a member of traditional coastal community nor someone who resided in a dwelling unit in the demised premises, constructed the mammoth structure in the demised property and used the said structures for commercial operations. Respondent No.2 blatantly violated the orders of the Hon'ble Bombay High Court by virtue of which large property owned by DPDCL, including the demised property was made *custodial legis*, whereupon encroachment has been made for carrying out illegal constructions. It is further submitted that the reconstruction of the existing structure was permitted vide order dated 04.04.2017 on following conditions:

- “i. All the provisions of the CRZ Regulations 2011, as amended should be strictly complied with.*
- ii. This NOC/approval is issued without prejudice to any other permission as required under the law including that of ownership of house, court case etc. As such, prior to the commencement of the 're-construction' work, it will be incumbent upon the applicant to obtain permission for any other authority as required under the law including from the local authority, Town and Country Planning Department, Revenue Authority etc*

- iii. *Traditional access/easement shall not be blocked. No construction should be carried out in the NDZ area between 0-200 mts from the High Tide Line.*
- iv. *The structure should not be used for commercial purpose and not to be sold or transferred to the non-traditional community.*
- v. *This permission is liable to be revoked, if it is found, at any stage, that the application contained false information/wrong plans/calculations/documents/misleading or false information, etc., or account of violation of aforementioned conditions.”*

16. Despite the fact that the above approval for reconstruction dated 04.04.2017 was obtained by misrepresentation, all the conditions stipulated therein have been violated by respondent Nos.2 to 4, particularly condition No.(iv), which barred the use of structure for commercial purpose and not to sell the area or transfer the same to the non-traditional community. The structure in question has been leased to respondent No.2 by respondent Nos.3 and 4, which is commercially exploited for the purpose of Bar, Restaurant and Resort and open space with beach beds. The original structure, which could not be more than 50 sq.mtrs., came to be extended from time to time and its plinth also came to be extended, without obtaining prior permission. On 01.11.2022, the applicant had also received an email from a group of concerned citizens informing that the construction over 15,000 sq.feet (approximately 1394 sq.mtrs.) plinth area was being carried out by respondent No.2 in the demised property without prior permission, which extended upto the beach i.e. CRZ-I area, which would cause damage to the turtle nesting site of Agonda Beach.

17. Further it is submitted that the demised property/property in question lies extremely close to the ecologically sensitive area, same being near turtle nesting site. As per the report titled “*Carrying Capacity of Beaches for Providing Shacks & Other Temporary Seasonal Structures in Private Areas*”, prepared by the National Centre for Sustainable Coastal Management(NCSCM), MoEF&CC submitted to the Government of Goa that

for Agonda beach, “no additional shacks, huts/tents/cottages should be considered as this is a designated turtle nesting site”. The said report has been accepted by respondent No.1 – GCZMA in its 218th meeting held on 18.12.2019. A copy of the said report is annexed as Annexure-A23 and the minutes of the 218th meeting of GCZMA – respondent No.1 held on 18.12.2019 are annexed as Annexure-A24.

18. Further it is mentioned that as per CZMP approved in the year 2022 for the coastal zone of village Agonda, the demised property is shown in NDZ area and abutting turtle nesting sites, right in front of the demised property. Respondent No.2 has in fact encroached on a portion of the beach by construction of permanent cemented and tiled platform and steps in the CRZ-1 area. The relevant extract on scale 1:4000 as well as 1:25000 map has been annexed by the applicant as Annexure-A25, colly. Further it is mentioned that in December, 2022, the applicant engaged private surveying agency (DGPS Survey) for taking aerial photography of the demised property which revealed that in fact, there were three double storey structures in the demised property, as under:

- “a. Structure A – admeasuring 815 sq.mts.(plinth area) – 4 mts from HTL.*
- b. Structure B – admeasuring 496 sq.mts. (plinth area) – 39 mts from HTL*
- c. Structure C – admeasuring 122 sq.mts (plinth area) – 51 mts from HTL”*

The plan annexed to the report makes it clear that the respondents have constructed mammoth permanent double storey structures totally admeasuring 1433 sq.mtrs (plinth area). The said report also mentions that the total area of encroachment on Survey No.100/10 is 3200 sq.mtrs. The said survey report dated 23.12.2022 is annexed as Annexure-A26.

19. According to the applicant, before presenting this Original Application, he had obtained from Google search the information that respondent No.2 is running a full-fledged resort, with multiple rooms, around 20 in number and

for each room, it is charging over Rs.9000 per night. The screenshots of the images of the said structure have been presented showing that it is opening for the booking. The said evidence is on record to prove that the site demised property lies in NDZ area and the permission under which it has been raised has been obtained by playing fraud on respondent No.1 – GCZMA. Respondent Nos.3 and 4 had leased out the structures in the demised property illegally to respondent No.2 and respondent No.2 further constructed new structures together admeasuring over 1433 sq.mtrs plinth area and approx.. 35,000 sq.feet built-up area , which is liable to be demolished.

20. In view of above facts, it is prayed by the applicant that the permission dated 04.04.2017 (annexed at pages 249 to 251 of the paper-book), granted by respondent No.1 – GCZMA in favour of respondent No.3 with respect to the demised property on Survey No.100/10 of village Agonda, Taluka Canacona, Goa be set aside and a direction be issued to respondent No.1 – GCZMA to take appropriate steps to demolish all the illegal structures on the said Survey number.

21. This matter was first considered by us on 21.02.2023 and a Joint Committee was constituted with a direction to submit its factual and action taken report within a month as well as notices were directed to be issued to the respondents. The Joint Committee has submitted its report on 10.04.2023 which is at pages 371 to 373 of the paper-book.

22. The stand taken by respondent No.3 – Selso Fernandes, by his affidavit-in-reply dated 21.04.2023 is that the challenge is made by the applicant to the works carried out by respondent Nos.3 and 4 in terms of approval granted by respondent No.1 – GCZMA dated 04.04.2017. The challenge to approval dated 04.04.2017 could be made under Section 16(g) of the National Green Tribunal Act as the same has been issued under Section 5 of the Environment (Protection) Act (“NGT Act”, for short). The said order/permission could have been challenged within 30 days from the date

of issuance of direction by way of preferring an appeal for which limitation was 30 days, which expired on 04.05.2017. Therefore, the principal remedy asked for in this application is barred by limitation. In view of above, there is no question of entertaining this application under Sections 14, 15 and 18 of the NGT Act. Hence, the application is liable to be dismissed. The applicant has concocted a cause of action surreptitiously to wriggle out of law of limitation. The applicant itself has submitted that the cause of action first arose in June, 2022. Despite that, the applicant has moved this application in February, 2023, which is beyond more than six months from the date, the cause of action first arose. The permission dated 04.04.2017 was in public domain for over last five years. The said permission for raising construction of structures located in Survey No.100/10 is legal in terms of the CRZ Notification and applicable laws. The applicant has no locus standi to institute the present proceedings. The applicant is seeking indirectly the enforcement of its purported claim over the landed property, which is essentially a civil dispute beyond the purview of this Tribunal under Sections 14, 15 and 18 of the NGT Act. There are cases of loan fraud pending against the promoters of the applicant. The answering respondent relied upon the following documents:

- “i. Form I & XIV of property bearing Sy.No.100/10 of village Agonda, Taluka Canacona.*
- ii. Survey Plan of property bearing Sy.No.100/10 of village Agonda, Taluka Canacona.*
- iii. N.O.C. dated 30.03.1985 bearing No.VPA/CAN/1984/85/146 issued by the Village Panchayat of Agonda, Canacona.*
- iv. N.O.C. dated 09.05.1984 bearing No.VPA/CAN/1984/85/23 issued by the Village Panchayat of Agonda, Canacona.*
- v. Photograph depicting the completion of the Industry Registration Process.*
- vi. House Tax Receipt dated 15.04.1989 issued by the Village Panchayat of Agonda.*
- vii. House Tax Receipt dated 08.10.99 issued by the Village Panchayat of Agonda.*
- viii. Excise License dated 11.11.1996 for retail sale of liquor.*

ix. *NOC dated 17.01.1991 issued by Panchayat to start Guest House.”*

The above documents are annexed with the reply-affidavit by respondent No.3 as Annexure-A1, colly.

23. It is submitted by the answering respondent that the permission dated 04.04.2017 is in accordance with the principles of law and that cumulative reading of the above documents would indicate that House Nos.438 and 439 existed prior to 1991, therefore, the same were beyond the rigours of CRZ Notification, which came into force only in February, 1991. The N.O.C. dated 09.05.1984 granted by the Village Panchayat, Agonda for repair and renovation of House No.438 without altering the existing plinth of 338 sq.mtrs. has not been altered till date. The N.O.C. dated 30.03.1985 issued by the Village Panchayat, Agonda regarding repair and renovation of House No.439 has been directly granted. In addition to above, the permission was granted to repair the wooden structure of 250 sq.mtrs. Pursuant to the permissions granted by respondent No.1, the existing structure was reconstructed and renovated in terms of the permissions, which are not in violation of CRZ Notification. Apart from House Nos.438 and 439, there existed a temporary structure, which was used only for storage purposes, which is not causing harm to ecology as the same is erected with GI pipes and the shed is of temporary nature.

24. It is further submitted by the answering respondent that all the allegations related to cutting of sand dunes, land filling and felling of natural vegetation are denied. It is stated by the answering respondent that the structure in question has been neither sold nor transferred to any third party. The lease-deed executed in favour of respondent No.2, in no manner, violates the terms of the permission granted by respondent No.1. The report titled “Carrying Capacity of Beaches of for Providing Shacks and Other Temporary Seasonal Structures in Private Areas” is misconceived. The said report has not been produced by the applicant. It is evident that the study

undertaken by NCSCM and the conclusion arrived at did not apply to the pre-existing structures. The veracity in the documents and the photographs annexed with the application has been denied. The report dated 23.12.2022, relied upon by the applicant, does not depict the correct position of loco. Accordingly, the contents of the said report and the conclusions drawn therein are also disputed. As per the terms of CRZ Notification, 2011, there is no restriction of whatsoever nature on the user of the structure, post repairs or reconstruction. The subject property falls in CRZ-III and the restriction on user is contemplated on CRZ-II areas. The permissions issued by GCZMA have to be construed in that context. The condition No. (i) of the said permission mandates that the provisions of CRZ Regulation 2011 shall be complied with. The condition No.(iv) is not applicable to the subject construction as the same is applicable only in the event of regularization of the structure sought in terms of Regulation 6 sub-clause (d), which is applicable only in respect of dwelling units of traditional coastal communities, which do not have approval from the concerned authorities and therefore, are not applicable in case of existing authorized structures, which are approved for repairs or reconstruction. The reconstruction contemplated with regard to transfer and user is only in respect of such structures falling within the purview of para 6(d) and the said condition No.(iv) is applicable to such structures. The subject structures were always used for commercial purpose prior to 1991. Therefore, there is no change of user on the part of the answering respondent. It is also denied that the construction falls within NDZ, hence deserves to be demolished. It is prayed by the answering respondent that in view of above facts, this Original Application deserves to be dismissed.

25. On behalf of respondent No.2 – M/s Dream Discovery, affidavit-in-reply dated 20.07.2023 has been filed, wherein it is submitted that the application is barred by limitation and the answering respondent has also reiterated the version of respondent No.3 with respect to the fact that for

getting the impugned permission set aside, an appeal under Section 16(g) of the NGT Act should have been filed, which is time-barred and in order to circumvent the provision of limitation, the applicant has opted to file present Original Applicant under Sections 14, 15 read with Section 18 of the NCT Act, which is liable to be dismissed. The other facts are also same which have been mentioned by respondent No.3 in their affidavit, which are reproduced by us above.

26. From the side of respondent No.1 – GCZMA, reply-affidavit dated 04.10.2023 has been filed stating therein that it had received a complaint dated 08.06.2022 from the applicant with regard to illegal construction of Tourist Resort “Dream Discovery” in Survey No.100/10 of village Agonda. On receipt of the said complaint, GCZMA decided to inspect the site through its technical team. There was a direction from this Tribunal to finalize the work of CZMP of 2011 for the State of Goa, which work was being carried out by the technical team because of which the inspection got delayed. The CZMP of the State of Goa was approved on 06.09.2022 and thereafter, the Committee of GCZMA was dissolved on 31.10.2023. In the meantime, it received a direction from the Registrar of this Tribunal in compliance with this Tribunal’s order dated 21.02.2023, directing the answering respondent to form a Joint Committee and to inspect the survey number in question and submit its report. The joint inspection was conducted on 14.03.2023. The site inspection report has shown all structures at loco now burden to prove the legality of all structures shown in the site inspection is on violator. The GCZMA issued show-cause notice to the violator on the ground of principle of natural justice and granted personal hearing to the violator to justify the authorization of his structures shown in site inspection. Respondent No.3 had filed two representations before the answering respondent on 22.06.2023 seeking deletion of condition No.(iv) of the approval dated 04.04.2017, which was considered and a conclusion was arrived at that the same was irrelevant as the said condition was related to Regulation 6 sub-

clause (d) of the CRZ Notification 2011 and the said condition could be imposed in case of regularization structures whereas the answering respondent's approval is for repair and renovation of two existing authorized structures. Hence, the answering respondent decided that there is no restriction on transfer or sale of authorized structure under CRZ norms and the request pertained to commercial use of existing house. The applicant may first seek permission from TCP. The minutes of 357th meeting held on 29.08.2023 have been annexed as Annexure-A to this affidavit. The reconstruction of respondent No.3 falls within the permissible activity envisaged in CRZ Notification, 2011. With this reply-affidavit, the minutes of 357th meeting of respondent No.1 dated 29.08.2023 have been annexed and at Case No.1.13 of these minutes, the matter in hand has been dealt with, as follows:

“Case No.1.13

To decide on two Representations of Mr. Selso Fernandes, H.No.438, Val A framento Agonda Canacona Goa received by GCZMA on 22/06/2023 seeking deletion of Condition (iv) of the Approval dated 04/04/2017 issued by Ld. GCZMA.

GCZMA granted approval to Mr. Selso Fernandes for re-construction of his two existing authorized structures in survey no.100/10 of village Agonda Canacona on 04/04/2017 wherein Authority makes mention on NOC at clause 4 condition that structure should not be used for commercial purpose and not to be sold and transferred to the Non-traditional community. The applicant prayed before Authority deletion of said condition No.4 from both NOC granted by the Authority to said Mr. Selso Fernandes as said condition no.4 inadvertently put on approval/NOC of applicant by GCZMA as same is not applicable for such approval of re-construction of existing authorized structures.

Decision : - *The Authority observed that applicant Mr. Selso Fernandes in year 2017 applied before this Authority repair and renovation of his two existing authorized structures in survey No.100/10 of village Agonda, Canacona, Goa. The Authority after inspection and verifying all documents with regard to legality of structures of applicant, Authority decided to grant permission to applicant for repair and renovation of his two structures situated in property survey No.100/10 of village Agonda.*

Whereas wit that context Authority issued two NOCs dated 04/04/2017 to the applicant Mr. Selso Fernandes for repair and renovation of his two authorized existing structures in property surveyed under survey No.100/10 of village Agonda, however at time of issue of said NOCs to the applicant Authority mentioned some conditions and condition at clause 4 is mentioned as "structure should not be used for commercial purpose and not to be sold and transferred to the Non-traditional community" hence present representation filed by applicant for deletion of said clause 4 (condition) mentioned on his two NOC issued by this Authority for repair and renovation of his two authorized structures.

Authority deliberation and discussion on representation of Mr. Selso Fernandes arrived under following conclusion.

Authority in opinion that condition mentioned at clause 4 of applicant Mr. Selso Fernandes NOCs is not applicable as NOCs were granted to applicant is for repair and renovation of his two existing authorized structures.

Condition mentioned at clause 4 of applicant NOCs is the provision provided in CRZ Notification 2011 which Authority has to consider at time of regularization of any structures in question before the Authority for regularization.

Provision of 6(d) under CRZ Notification, 2011 speaks as follows:-

"6(d) The dwelling units of the traditional coastal communities including fisherfolk, tribals as were permissible under the provisions of the CRZ notification, 1991, but which have not obtained formal approval from concerned authorities under the aforesaid notification shall be considered by the respective Union territory CZMAs and the dwelling units shall be regularized subject to the following condition, namely- (i) these are not used for any commercial activity (ii) these are not sold or transferred to non-traditional coastal community."

The Authority noted that if any question related to regularization of structures within CRZ area is concerned then Authority has to consider that basic condition provided in provision 6(d) of CRZ Notification 2011 for regularization of any structure. The dwelling units of the traditional coastal communities including fisherfolk, tribals which have not obtained formal approval from concerned authorities under the notification that dwelling units shall be regularized considering the following condition, namely- (i) these are not used for any commercial activity (ii) these are not sold or transferred to non-traditional coastal community.

In view of above it clear that condition that is mentioned on application NOCs dated 04/04/2017 issued by Authority for repair and renovation of his two authorized existing structures in property surveyed under survey No.100/10 of village Agonda is inadvertently mentioned and need to be corrected.

In Beach Carrying capacity report prepared by NCSCM which is accepted by Authority in said report at page 17 and 87 it is mentioned as under:

“Structures existing prior to 19 February 1991 could be permitted to carry out regulated commercial activities such as honestays, guest houses and restaurants without any further increase in coverage or FAR/FSI as it would not occupy additional vacant land.”

Similarly, Authority in its 215th meeting held on 22/10/2019 in deciding case of Roshan Mathias Authority was opinion that conversion of usage of any structure from residential to commercial is ipso-facto not banned under CRZ norms.

The Authority also in opinion that there is no restriction on transfer or sell of authorized structure to any person under CRZ norms. However, since the present request pertains to commercials utilization of existing house, the GCZMA decided that the Applicant may first seek permission from TCP.”

27. On the basis of above pleadings, following issues are framed for being decided by us.

Issues :

- (i) Whether for getting the permission dated 04.04.2017 granted by respondent No.1 – GCZMA in favour of respondent No.3 in respect of the property in question i.e. Survey No.100/10, village Agonda, Taluka Canacona, Goa, which is prayed to be set aside, an appeal was required to be filed under Section 16 (g) of the National Green Tribunal Act, 2010 ? If yes, whether the same could have been filed on the date when the present Original Application has been filed or the same would stand time barred ?
- (ii) Whether the present Original Application under Sections 14, 15 read with Section 18 of the National Green Tribunal Act, 2010 can be held

to be maintainable and if the same is not found to be maintainable and this Tribunal comes to the conclusion that an appeal was required to be filed for the reliefs sought, whether a suo motu action can be taken by this Tribunal, in case it comes to the conclusion after perusal of record that there was some violation of the provisions of the CRZ Notification, 2011 ? and whether appropriate order in that regard can be passed ?

(iii) Whether non-inclusion of relief pertaining to seeking quashing of the decision taken by respondent No.1 – GCZMA in its meeting held on 29.08.2023 with respect to deletion of condition No. (iv) of the permission dated 04.04.2017, would have an impact in granting prayer No.(a) i.e. quashing of permission dated 04.04.2017 granted by respondent No.1 – GCZMA ?

(iv) What relief ?

28. We have heard the arguments of learned Senior Counsel Mr. Nikhil Nayyar for the applicant, learned counsel Ms. Supriya Dangare for respondent No.1, learned counsel Mr. Saket Mone, for respondent No.2 and learned counsel Mr. Shivan Desai for respondent Nos.3 and 4 and perused the record.

29. Our attention is drawn by the learned senior counsel Mr. Nikhil Nayyar to the lease-deed dated 28.09.2020 (annexed at pages 866 to 903 of the paper-book), which is executed by respondent Nos.3 and 4 in favour of respondent No.2 wherein a reference is also made of earlier lease-deed dated 12.09.2016 executed by the lessor in favour of lessee. It is also recorded that lessee has obtained permission for reconstruction and repair from GCZMA and Town and Country Department, Village Panchayat of Agoda to reconstruct, repair and renovate the house Nos. 438 and 439. It is also recorded in it that in its 144th meeting held on 21.03.2017, the GCZMA examined the proposal for reconstruction of the aforesaid house No.438 and granted consent to reconstruct the existing house No.438, subject to

conditions enumerated in the letter dated 04.04.2017 and as per the plan annexed to the said letter. It is also recorded in it that pursuant to the Deed of Lease dated 12.09.2016, executed in favour of the lessee, the lessee had invested an amount of Rs.3,00,00,000/- (Rupees Three Crores) for renovating, reconstructing and/or repairing the houses and the lessors herein accepted and acknowledged the same. In case the lessee invests further amounts in renovating, reconstructing and/or repairing the houses, the same shall be recorded in the Books of Accounts of lessee and would be proof of expenditure incurred by the lessee and will be acceptable to lessor. Having drawn our attention to this text in the lease-deed, it is argued by the learned counsel for the applicant that the entire money for raising the construction of resort, which is shown as Rupees three crores, which is spent by the lessee i.e. respondent No.2 and that the lessor - respondent No.3 did not spend any amount in raising the said construction. Therefore, it indicates that respondent No.3 helped respondent No.2 to construct the illegal resort on his land in order to earn illegal money and respondent No.3 fully colluded with respondent No.2 in order to give effect to this construction in an area which was prohibited for such kind of construction.

30. Our attention is also drawn to page 507 of the paper-book which is extract of the minutes of the 144th meeting of GCZMA held on 21.03.2017 pertaining to the clearance of proposed reconstruction of house bearing house no.439 and at page No.507, it is indicated that the plinth area of the same is 193.48 sq.mtrs and the proposed ground floor area is also shown as 193.48 sq.mtrs., while as per page 409 of the paper-book, which is No Objection Certificate issued by the Village Panchayat, Agonda dated 30.03.1985 related to house No.439, the plinth is recorded as 465 sq.mtrs. Having drawn our attention to this, it is argued that when the plinth of the house No.439 is shown in the above No Objection Certificate to be 465 sq.mtrs, how the plinth area is being shown in the minutes of the meeting of

the GCZMA to be 193.48 sq.mtrs., which has not been explained by respondent Nos.2 and 3.

31. Thereafter, our attention is drawn to the minutes of the meeting of 144th meeting of GCZMA held on 21.03.2017 (pages 525 to 526 of the paper-book), which relates to house No.438 and at page 526, wherein the area of the plinth is recorded 217.60 sq.mtrs. while proposed ground floor area is 217.60 sq.mtrs. As against it, our attention is also drawn to page 410 i.e. No Objection Certificate (NOC) dated 09.05.1984, issued by the Village Panchayat, Agonda in respect of repair and renovation of House No.438, which contains the existing plinth area of 338 sq.mtrs. Therefore, it is argued that regarding this house No.438 also, there is much discrepancy in the plinth area, which has not been explained by respondent Nos.2 and 3.

32. Our attention is also drawn to the Joint Committee report dated 10.04.2023 (pages 371 to 373 of the paper-book), along with the map, which has also been annexed at page 384 of the paper-book, wherein legends with respect to house Nos.438 and 439 are given, and the area of RCC structure was actually found by the Joint Committee to be 338 sq.mtrs of structure "A" (house no.438) and that of structure "B" (house no.439) to be of 462 sq.mtrs., while as per survey plan, the area of structure "A" is 47.00 sq.mtrs and the area of structure "B" is shown as 32.00 sq.mtrs. Pointing out above, it is argued by the learned counsel for the applicant in this regard that the said map, which is annexed with the Joint Committee report, would indicate that actually constructed RCC built-up area on the site in question i.e. house Nos.438 (structure "A") and 439 (structure "B") are 338 sq.mtrs and 462 sq.mtrs respectively, while permission granted as per the Joint Committee report is for far less area. It specifically indicates that the construction was made by respondent Nos.2 and 3 over larger plinth area and it cannot be held that there is no construction made beyond the plinth area.

33. Further, our attention is drawn to page 366 of the paper-book, which is a photograph of the construction which has been raised of the Resort in question by the name “Dream Discovery” and it has been tried to be shown by this document that the construction is huge one, which could not have been taken to have been done on the original plinth area. It is also pointed out by the learned counsel that clause (iv) of the conditions, which has been removed by the GCZMA, which has been stated in the minutes of GCZMA, which have been reproduced by us above, has been done in collusion with respondent Nos.2 and 3, because the said condition has been removed only after filing of this application by the applicant, seeking quashing of the permission/approval. The GCZMA – respondent No.1 has deliberately deleted that condition, which permitted respondent No.2 to run commercial activity in the said structure, which actually stood prohibited as per clause/condition (iv) earlier.

34. Our attention is also drawn to Para 6 sub-clause (d) of CRZ Notification, 2011, which reads as follows:

“6. *Enforcement of the CRZ notification, 2011-*

(a) ****

(b) ****

(c) ****

(d) *The dwelling units of the traditional coastal communities (especially) fisherfolk, tribals as were permissible under the provisions of the CRZ notification, 1991, but which have not obtained formal approval from concerned authorities under the aforesaid notification shall be considered by the respective Union territory CZMAs and the dwelling units shall be regularized subject to the following condition, namely –*

(i) These are not used for any commercial activity

(j) These are not sold or transferred to non-traditional coastal community.”

Our attention is also drawn to Para 8 III A (ii) of CRZ Notification, 2011, which is as under:

“III. *CRZ-III,-*

A. Area upto 200 mtrs from HTL on the landward side in case of seafront and 100 mts along tidal influenced water bodies or width of the creek whichever is less is to be earmarked as “No Development Zone (NDZ)”,

-

(i) *****

(ii) No construction shall be permitted within NDZ except for repairs or reconstruction of existing authorized structure not exceeding existing Floor Space Index, existing plinth area and existing density and for permissible activities under the notification (especially) facilities essential for activities; Construction/reconstruction of dwelling units of traditional coastal communities including fisherfolk may be permitted between 100 and 200 metres from the HTL along the seafront in accordance with a comprehensive plan prepared by the State Government or the Union territory in consultation with the traditional coastal communities (especially) fisherfolk and incorporating the necessary disaster management provision, sanitation and recommended by the concerned State or the Union territory CZMA to NCZMA for approval by MoEF.”

Our attention is also drawn to Para 8 V, sub-clause (3) (ii) of which reads as under:

“V. Areas requiring special consideration, -

1. *****

2. *****

3. CRZ of Goa.-

In view of the peculiar circumstances of the State Goa including past history and other developments, the specific activities shall be regulated and various measures shall be undertaken as follows:-

(i) *****

(ii) *Reconstruction, repair works of the structures of local communities including fishermen community shall be permissible in CRZ.”*

35. Having drawn our attention to the above provisions, it is argued by the learned counsel for the applicant that Para 6 sub-clause (d) would be clearly applicable in the present case, which provides that the dwelling units of the traditional coastal communities, especially fisherfolk, tribals as are

permissible under the provisions of the CRZ notification, 1991, but which have not obtained formal approval from concerned authorities under the aforesaid notification, shall be considered by the respective Union territory CZMAs and the dwelling units shall be regularized on the conditions that these are not used for any commercial activity and are not sold or transferred to non-traditional coastal community. But instead of invoking this provision, respondent No.1 – GCZMA has given benefit to respondent Nos.2 to 3 of the provision of Para 8 III A(ii), which provides that no construction shall be permitted within NDZ except for repairs or reconstruction of existing authorized structure not exceeding existing Floor Space Index, existing plinth area and existing density and for permissible activities under the notification, especially facilities essential for activities; construction/reconstruction of dwelling units of traditional coastal communities including fisherfolk may be permitted between 100 and 200 metres from the HTL along the seafront in accordance with a comprehensive plan prepared by the State Government or the Union territory. It is argued that this provision too has been wrongly interpreted by respondent No.1 and respondent Nos.2 and 3 as well because the construction/reconstruction, which is permitted under this provision also related to the dwelling units of traditional coastal communities. It is also argued that the pretext is being taken by respondent No.1 that there is no bar for commercial activity in this provision, hence permission granted initially which was later on modified by removing condition no. (iv), cannot be treated to be illegal. This act on part of respondent No.1 is stated to be illegal, biased and against the spirit of CRZ Notification, 2011. No-where would it be reflected by the provision of this Notification that dwelling units of coastal community could be allowed to be used as a Resort/Hotel or for some commercial purpose. This Notification intended to provide protection to weaker section of the local traditional coastal communities to safeguard their interest, but it appears that

respondent No.1 has gone to help the big resort owners to take advantage of the loopholes in the provisions.

36. As regards the objection that this application is time-barred, it is candidly admitted by the learned counsel for the applicant that if the Tribunal is of the view that an appeal was required to be filed under Section 16(g) of the NGT Act to get the impugned permission set aside, the jurisdiction of the Tribunal cannot be ousted to ensure that no such act is permitted, which would adversely infringe upon the ecology. If anyhow the matter is placed before the Tribunal of any kind of infringement of provisions of law or violation of environment, it will have full power to invoke its jurisdiction irrespective whether it is found to be time-barred for the complainant to bring this complaint against the defaulting act/infracture of law. In this regard, learned counsel for the applicant has placed reliance on the judgment of this Tribunal (Principal Bench) in the case of **J.Mehta Vs. Union of India & Ors.; 2013 SCC OnLine NGT 88**.

37. The learned counsel for the applicant has also pointed out that he had made a complaint to respondent No.1 as is stated by him in para 4.10 of the application, but when no action was taken by respondent No.1, the present application has been moved by the applicant. Further he has pointed out the conduct of the parties i.e. respondent Nos.2 to 4 to be grossly in violation of CRZ Notification, 2011.

38. From the side of respondent Nos.3 and 4, learned counsel Mr. Shivan Desai while making his submissions, has drawn our attention to the same provisions i.e. Para 8 III A(ii) and it is interpreted by him that the area where the construction in question is said to be existing falls in CRZ-III area and within that area, even from 0 to 100 metres from the HTL, reconstruction/repair can be done of existing structure as the same has not been barred by the above mentioned provision specifically. Apart from this, he has also pressed that the application is time-barred because of the fact that the applicant ought to have filed an appeal under Section 16(g) to get

the impugned permission set aside. It is vehemently argued by him that the provision of Para 6(d) would not be applicable here because the same would be invokable in the case where regularization of existing structure of a dwelling unit by a person of traditional coastal community and that under Para 8 III A(ii), there is no bar to any commercial activity being run in such a structure. Respondent Nos.3 and 4 have not exceeded the plinth area as far as raising of construction is concerned, because, according to him, the documents at pages 409 and 410 of the paper-book, which are NOCs, issued by the Village Panchayat, Agonda, relating to house Nos.439 and 438, have shown plinth area of 465 sq.mtrs and 338 sq.mtrs as far back as in the year 1985, which has not been exceeded while raising the present construction. Therefore, the permission which has been granted under Para 8 III A(ii) is absolutely legal and the demolition of the said construction cannot be ordered.

39. From the side of respondent No.2, learned counsel Mr. Saket Mone also has raised ground that the application is time-barred as he too submits that an appeal under Section 16(g) of the NGT Act was required to be filed for the reliefs claimed. He has argued that Section 14 of the NGT Act cannot be invoked in this case, for getting the impugned permission/order set aside. As per the averments made in the original application, the entire interest came to be devolved upon the applicant on 24.03.2017 over a property. It is argued that in para 4.5 of the application it is stated that the applicant noticed huge structure in the month of June, 2022, despite that this application under Section 14 of the NGT Act has been filed on 02.02.2023, which is beyond more than six months and has been time-barred even if it be said to be under Section 14 for being taken into consideration.

40. Learned counsel Mr. Mone has drawn our attention to para 11 of the application and states that it mentions cause of action first arose in June, 2022 when the applicant first complained to respondent No.1 vide letter dated 08.06.2022. Thereafter, the cause of action arose again when the

applicant received DGPS aerial survey report on 23.12.2022. Thereafter the cause of action arose when the applicant found through Google Search that respondent No.2 has commenced operations in full swing and is running the illegal structures as full-fledged beach resort cum beach café. The applicant has thus wrongly taken recourse to continuing cause of action, hence the application should be treated to be time-barred. The learned counsel for respondent No.2 has also drawn our attention to Para 8 III A(ii), which we have already considered above, as it is argued by him that the said provision would be invokable in this case and not Para 6(d). The learned counsel has repeated the same argument as that of learned counsel for respondent Nos.3 and 4 in this regard.

41. In the affidavit-in-rejoinder dated 17.07.2023 filed by the applicant to the reply filed by respondent No.3, it is submitted that the property on which the resort is being illegally operated has been purportedly leased out by respondent Nos.3 and 4 to respondent No.2. Respondent No.1 – GCZMA has throughout kept eyes closed towards the illegal running and operation of the said resort by respondent No.2 and has rather facilitated encroachment and development of the permanent structures in eco-sensitive area. It is evident that the original available area of 50 sq.mtrs was illegally enlarged to 79 sq.mtrs under the ISLR plan, which then became 411.08 sq.mtrs as per the permissions fraudulently obtained by respondent No.3 from the GCZMA to the extent of 1160 sq.mtrs as per the joint site inspection report dated 10.04.2023. From the year 2017, large scale constructions were undertaken by respondent Nos.2 to 4 in complete violation of the numerous CRZ Notifications as the concrete structures, RCC slabs and cement base, etc have been made by encroachment upon the portion of the beach. Besides that, respondent No.2 is also operating without consent to operate from the Pollution Control Board. The Joint Committee report has also failed to mention whether the purported house No.438 is being used as a house or as a resort, whether purported house No.439 is being used also as a resort or

as a house, whether the resort by respondent No.2 is being run under valid authority/ permission, whether it has committed violation of the provisions of CRZ Notification, 2011 and how did the area of 50 sq.mtrs. as available to Ms. Maria Fernandes, increase to 411.08 sq.mtrs as per respondent No.1's permissions, how did the area of 411.08 sq.mtrs, as per GCZMA permissions, increase to 1160 sq.mtrs., as mentioned in the joint site inspection report. The sanction letter 04.04.2017 clearly stipulated that the structure would not be used for commercial purpose and nor would it be sold or transferred to the non-traditional community. However, respondent No.3 violated both the conditions and transferred the property to Mr. Vijay Gokuldas Komarpant, belonging to non-traditional community by way of lease and allowed the property to be used for commercial purposes. It is further reiterated that only one house, which is mentioned in Form I & XIV in Survey No.100/10 to Ms. Maria Fernandes was indicated but the record would unequivocally demonstrate that over the years, respondent Nos.3 and 4 illegally usurped further land and erected structures, for which respondent No.1 purportedly issued the impugned permissions. Respondent No.1 – GCZMA in its 144th meeting held on 21.03.2017 specifically noted the house Nos.438 and 439 to be within 200 mtrs of HTL, which is a No Development Zone (NDZ) and while quoting provision under Para 8 III A(ii) of the CRZ, which prohibited construction within NDZ except for repairs and reconstruction of authorized structures and in case of traditional coastal communities, construction and reconstruction was permissible of dwelling units only between 100 to 200 mtrs from the HTL. The GCZMA conveniently overlooked that the two offending houses i.e. House No.438 and 439 were located within 100 mtrs to 200 mtrs of HTL where no permission under Para 8 III A(ii) of the CRZ could have been granted. The distance of the said houses from HTL stands corroborated from the ISLR site plan annexed to the Joint Site Inspection Report which denotes the distance of structures from HTL viz. 56 mtrs, 17.90 mtrs, 30 mtrs and 62.50 mtrs, respectively. Further

it is mentioned that the ISLR site map annexed to the Joint Site Inspection Report categorically mentions the area of structures “A” and “B” as per the survey plan to be 47 sq.mtrs and 32 sq.mtrs., respectively, however, while granting the purported permission in favour of respondent No.3, the respondent No.1 GCZMA issued the permission for 217.60 sq.mtrs for House No.438 and 193.48 sq.mtrs for House No.439, totaling to 411.08 sq.mtrs. The applicant, on 12.07.2023, got a drone survey done on site, which shows that the structures present on the site are of permanent nature and the area is occupied far in excess of the area that respondent Nos.3 and 4 were entitled to and the copy of the photographs are annexed as Exhibit-R5, colly. Rest of the contents reiterates the same version which have been stated by the applicant in the memo of Original Application, hence need not be re-produced here.

42. The applicant has also submitted objections against the Joint Committee Report by filing submissions dated 17.07.2023, annexed at pages 553 to 570 of the paper-book, wherein it is submitted that the report categorically mentions the property i.e. Survey number in question lies in CRZ-III (NDZ) as per CZMP 2011 and an area from 0 to 200 mts from HTL is designated as NDZ and therefore, the structures in question in Survey No.100/10 being well within 100 mtrs of HTL, no permission for construction could have been given by respondent No.1 for carrying out commercial operations in the form of full-fledged resort. The report identifies three structures on site shown by “A”, “B” and “C”. Detailed area of these structures is given in tabular form from HTL, as under:

Structure (Description)	Distance from HTL
`A' (R.C.C.)	56.00 Mtrs
`B' (Wooden Part)	17.90 Mtrs.
`B' (R.C.C.)	30.00 Mtrs.
`C' (G.I. Tube & Pipe)	62.50 Mtrs.

43. It is submitted by the applicant that all the three structures 'A' to 'C' being of permanent nature are within 100 mtrs. from HTL. The report also specifies that the property is enclosed from three sides with approx.. 1.20 mtrs. high masonry compound wall and open access to sea. In this regard, the applicant says that a 3-side masonry compound wall is in no manner treated to be a temporary structure and the same should be treated to have been made in violation of the CRZ Notification, 2011. Apart from that, there is a platform of more than one mtr in height built on the sea-side (beach) on which the said property is built and the property is accessed by climbing a staircase built on beach side to access the property. The structure "A" has been identified as house No.438, occupying an area admeasuring 338 sq.mtrs. As per site plan enclosed with the report, respondent No.3 has relied upon alleged Panchayat NOC letter dated 09.05.1984 that the said structure had been in existence prior to 1991 and the same is reconstructed based on the impugned permission dated 04.04.2017. The Committee observed that the structure "A" is of a permanent nature with only ground floor. However, there are structures built on first floor, which have been ignored and not brought to the notice of this Tribunal which is evident from the pictures of the site annexed at Exhibit-A4. With respect to structure "B", identified as house No.439, occupying an area admeasuring 462 sq.mtrs. As per site plan enclosed with the report, respondent No.3 has relied on the Panchayat NOC dated 30.03.1985 to contend that the said structure has been in existence prior to 1991, which is reconstructed based on the impugned permission dated 04.04.2017 and in this regard also, it is stated that it is of permanent nature with only ground floor. It is stated that there is a wooden shed which is constructed with wooden and MS sections with concrete flooring.

44. Further it is reiterated that as per form I and XIV, there was only one house belonging to Ms. Maria Fernandes, area of which could not have been more than 50 sq.mtrs since 5300 sq.mtrs. out of total area of 5350 sq.mtrs of survey number 100/10 had been sold by the land owners to DPDCL. Even the site plan prepared by the Inspector of Survey and Land Records, Canacona was attached to the report shows that the structure "B" was of 32 sq.mtrs, but the Google earth images would show that no such structure existed upto the year 2009. Therefore, it is clear that respondent No.1 – GCZMA is in connivance with the respondents and has been complicit in assisting respondent Nos.2 to 4 to make encroachment on the CRZ land. It is evident from the fact that the original available area of 50 sq.mtrs. was illegally enlarged to 79 sq.mtrs. under the ISLR plan, which then became 411.08 sq.mtrs as per permission granted by the GCZMA and the same is now being illegally occupied to the extent of 1160 sq.mtrs. As regards structure "C", no approval has been placed by respondent No.3. The report states that the said structure appears to be of GI tubes/pipes sheds, which appear to be of temporary nature, but that also appears to be illegal because of there being no permission for the same. Rest of the contents of the objections appear to be repetition of the facts which have already been stated by the applicant in its earlier affidavit.

45. Another rejoinder-affidavit has been filed by the applicant dated 24.07.2023 wherein same facts have been reiterated which have already been narrated by other statements made by the applicant in either Original Application or in its rejoinder.

46. The applicant has also filed objections to the reply filed by respondent No.1, through their affidavit dated 14.11.2023, wherein nothing new appears to have been stated which we have already narrated above.

48. Another reply-affidavit dated 26.07.2023 has been filed by the applicant in order to oppose the application of respondent No.2, seeking

rejection of the Original Application. In this affidavit also, we find nothing new to have been stated.

Findings :

Issue No. (i) :

47. As per issue No. (i), we have to decide as to whether for getting the permission dated 04.04.2017 granted by respondent No.1 – GCZMA in favour of respondent No.3 in respect of the property in question i.e. Survey No.100/10, village Agonda, Taluka Canacona, Goa, set aside, an appeal was required to be filed under Section 16 (g) of the National Green Tribunal Act, 2010 ? If yes, whether the same could have been filed on the date when the present Original Application has been filed or the same would stand time barred ?

48. From the side of the applicant, learned senior counsel Mr. Nikhil Nayyar has argued that the order/permission dated 04.04.2017 granted by respondent No.1 – GCZMA in favour of respondent No.3 has been obtained by fraud and therefore, the same needs to be set aside. In this regard, we had made a query to the learned senior counsel as to where is that ground set up by the applicant stating that fraud was played upon respondent No.1 in order to obtain permission, our attention was drawn by him to ground No.(J) and (K) of the memo of Original Application wherein it is submitted by him that respondent No.3 had obtained impugned permission under the garb of being a member of traditional toddy tapper community on the pretext that he had to reconstruct his dwelling unit. In this regard, respondent No.3 mischievously made two applications for permission for reconstruction and represented one old structure as two distinct structures and it was also concealed by respondent No.3 that the so called two structures had already been leased out by him to respondent No.2 for the purpose of starting the resort/restaurant and other commercial operations. Further, under ground (K), it is submitted by the applicant that respondent No.2 has acted in highhanded manner by proceeding with the construction knowing full well

that the permission obtained by respondent No.3 was for supposed reconstruction of his dwelling unit as a member of traditional local community. Respondent No.2 used permission to construct whole new structure and thereafter, made use of the same for commercial operations in the form of Bar and Restaurant and resort. Hence, the impugned permission, on the basis of which these activities have been undertaken by respondent No.3, needs to be set aside.

49. The main argument made by the learned counsel for respondent Nos.2 and 3 is that the applicant ought to have filed an appeal under Section 16(g) of the NGT Act, 2010, against the impugned permission dated 04.04.2017, which was granted by respondent No.1 – GCZMA in favour of respondent No.3 on property in question because that is an order passed by the GCZMA, which is being challenged and the same could have been challenged only under Section 16(g) of the NGT Act, by way of an appeal.

50. From the side of the applicant, it is rebutted by saying that the relief in the present Original Application is not only with respect to seeking quashing of the permission dated 04.04.2017 but also to seek demolition of all illegal structures which have been raised by respondent Nos.2 and 3 in the form of Resort by name “Dream Discovery Sea View Resort & beach Café” over the site in question which is falling in CRZ area the same being No Development Zone (NDZ) as the same is found to have been within 100 mtrs from HTL as per the joint site inspection report. If that construction is allowed to exist, same would result in the degradation of the ecology of the area in question it being so close to the sea beach, which activities are prohibited strictly and whenever any such activity or violation is pointed out or comes to the notice of the Tribunal, the Tribunal is empowered to take suo motu cognizance about the same and pass appropriate order with regard to demolition of the same or any other appropriate order in order to ensure that degradation of the ecology does not take place in the area. For this, reliance has been placed by the learned counsel for the applicant on the

judgment of this Tribunal in the case of **J. Mehta Vs. Union of India & Ors.; 2013 SCC OnLine NGT 88**, wherein being affected by the flagrant violations of the Environmental Clearance (EC) by respondent No.9, the applicant had approached this Tribunal. It was alleged that on comparison of the actual usage against the building plan and occupancy certificate, nearly 24,691.974 sq.mtrs area was being said to be illegally misused by respondent No.9, which was stated to have set up shops in basements and multi-level blocks meant for parking. Therefore, it was stated that the multi-level parking was a violation of the EC granted and the building plans and is a fundamental change in the parameters on the basis of which EC was granted. A primary objection was raised by respondent No.9 stating that this Tribunal did not have jurisdiction as the matter in question did not fall within the subjects specified in Schedule I to the NGT Act, 2010, which could be decided by this Tribunal. There was no substantial question relating to environment raised. Upon consideration of the matter, the Tribunal had made the following points for determination:

- “(i) Whether the present application is maintainable and discloses a cause of action and whether the Tribunal has the jurisdiction to decide such question within the purview of the provisions of the NGT Act, 2010 ?*
- (ii) Whether the application was time barred as per the provisions of the NGT Act ?*
- (iii) If the above questions were decided in the affirmative, whether respondent No.9 had committed any violation of the laws covered under Schedule I to the NGT Act ?*
- (iv) What relief the applicant was entitled to ?”*

51. It is observed in paragraph 44 of the judgment that ‘misuser’ simplicitor in relation to the sanctioned plan may invoke the jurisdiction of the Delhi Development Authority but where it is coupled with impact on environment and is violative of EC granted under the provisions of the Environment Act, then it certainly would be a matter raising environmental issues. It was also argued before this Tribunal that no specific allegations

had been made or facts disclosed which would bring the application within the ambit of Section 14 of the NGT Act. On conjoint reading of various paragraphs of the application, it was clear that there were matters primarily raising an issue with regard to violation of conditions of EC granted to respondent No.9 and its adverse and hazardous effects on the environment. Based on these factual averments and the grounds taken in the application, the applicant had prayed for rejection of the EC granted to respondent No.9 and corresponding permissions granted under the Water Act and the Air Act. It was one thing to challenge the EC on the ground that for the reasons and grounds taken up by an applicant the EC ought not to have been granted and therefore was liable to be revoked or cancelled, but it was certainly another thing to say that there was violation of the terms and conditions of the EC and because of such violation, the EC was liable to be revoked without challenging the grant of EC *per se*, and the matter before this Tribunal was said to have been covered in second category and it is recorded that the applicant was to be read in its entirety and along with the documents which had been annexed by the applicant. Upon their cumulative reading, it was established on record that the applicant had raised a substantial question relating to environment arising from the implementation of the enactments specified in Schedule I of the NGT Act. The language of Section 14 of the NGT Act is wide enough to take within its ambit a petition of the present kind. It is also recorded in this judgment that different regulatory regimes can simultaneously be available to a given situation. It will be more so when both the regulatory regimes operate in different fields and have distinct essentials as well as consequences and the present case was an apt example of this kind. The building bye-laws would govern buildings and its user while the EC would regulate the project as a whole in relation to the various facets of environment and its impact thereof. Both are regulatory regimes but they operate in distinct and incongruent fields which have no area of conflict. The project in question had various

dimensions under the environmental laws and the regulatory regime prescribed thereunder. The violation of the terms and conditions of such statutory regulatory regime would invite consequences and would have to be applied with all its rigours in the interest of the environment and public health.

52. Thereafter in this judgment of **J. Mehta** (supra), it is also considered as to under which provision of law, the application had been filed. In the prayer clause, it had been stated by the applicant that because of the violation of the EC conditions, same was liable to be revoked and the clearances granted under the provisions of the Water Act and the Air Act were liable to be recalled and the penal action was prayed to be directed to be taken against respondent No.9. On cumulative reading of the application and the prayer, it was clear that the application had not been filed under the provisions of Section 16 or 15 of the NGT Act. The counsel for the applicant in that case stated that the application was filed under Section 14 of the NGT Act, which was not barred by time as it fully satisfied the ingredients of Section 14 of the NGT Act as it raised a substantial question relating to environment and it arose out of the implementation of the enactments specified in Schedule I to the NGT Act. With respect to cause of action, it is recorded in this judgment that the same must be read in conjunction with and should take colour from the expression 'such dispute'. Such dispute will in turn draw its meaning from Section 14(2) and consequently Section 14(1) of the NGT Act. These are inter-connected and inter-dependent. 'Such dispute' has to be considered as a dispute which is relating to environment. The cause of action for such dispute should not be alien or foreign to the substantial question of environment. The cause of action must have a nexus to such dispute which relates to the issue of environment/substantial question relating to environment, or any such proceeding, to trigger the prescribed period of limitation. The cause of action, which in its true spirit and substance, does not relate to the issue of environment/substantial

question relating to environment arising out of the specified legislations, in law cannot trigger the prescribed period of limitation under Section 14 (3) of the NGT Act. The term 'cause of action' has to be understood in distinction to the nature or form of the suit. A cause of action means every fact which is necessary to establish to support the right to obtain a judgment, which is a bundle of facts which are to be pleaded and proved for the purpose of obtaining the relief claimed. In the case before the Tribunal, the entire controversy was said to revolve as to the effect of issuance of Notification under Sections 4 and 6 of the Land Acquisition Act and whether it will constitute cause of action under the NGT Act. The Tribunal held without hesitation the said issue in negative and it was held that Sections 4 and 6 of the Land Acquisition Act *per se* did not raise any substantial question relating to environment. Further it is mentioned in the judgment that the cause of action is not restricted to '*in personam*' but is an action available to any person in terms of Section 14 of the NGT Act, which empowers any person aggrieved to raise a substantial question relating to environment, including enforcement of any legal right relating thereto. The applicant was held to have established that he first came to know about the misuse and change of the user, particularly with regard to adverse environmental impact, only in the middle of December, 2012 and immediately thereafter, he took steps requiring the authorities concerned to take action as per law but to no avail. Then he preferred the present application within the prescribed period of six months and accordingly, the application was not held to be time barred. Further it is held that the Tribunal had to deal with the question whether the breach of conditions of EC was likely to cause environmental and health hazards or not. It is recorded that it came on record that approximately 59% of commercial area had been increased by such unauthorized conversion and misuser. The terms and conditions of the EC had specifically provided that in the event of any change in the scope of the project, respondent No.9 would take steps for reappraisal of the project and

take fresh EC, which admittedly, had not been done by respondent No.9 despite lapse of considerable time. These violations would consequently have a direct impact on traffic congestion, ambient air quality, contamination of underground water, sewage disposal and municipal solid waste disposal besides other adverse impact on the population density in the area. Therefore, it was held that the matter was not held to be barred by limitation.

53. From the set of facts, which are given in the above case, if we compare the facts of the present case, we find those very close to the case in hand wherein the challenge is made to the permission granted by respondent No.1 – GCZMA dated 04.04.2017 to respondent No.3 over the property in question for reconstruction of house No.439 subject to several conditions, one of which at serial No. (iv) states that the structure should not be used for commercial purpose and the property be not sold or transferred to non-traditional community.

54. The learned counsel for the applicant has pointed out that removal of condition No.(iv) of the approval dated 04.04.2017 was later on considered by respondent No.1 – GCZMA in its 357th meeting held on 29.08.2023, minutes of which are annexed at pages 862 to 865 of the paper-book and it was decided that the said clause (iv) would not be applicable on respondent No.3 as the NOC was granted to the applicant for repairs and renovation for two existing unauthorised structures. It is alleged by the learned counsel for the applicant that this condition has been got removed by respondent Nos.2 and 3 from respondent No.1 only after the filing of the present Original Application seeking quashing of the permission granted on 04.04.2017 because already respondent No.3, who claimed to be from traditional coastal community, had leased out his land in question to respondent No.2, which is actually being used for the purpose of Resort. Therefore, this act on the part of respondent No.1 – GCZMA also appears to be in collusion and it appears that respondent No.1 – GCZMA was trying to assist respondent Nos.2 and 3

to help them use that land for the purpose of running the Resort, which was legally not possible because as per Para 6(d) of CRZ Notification, 2011, which has already been reproduced by us above, the permission for such kind of construction could have been given for construction of repairs to a person coming from local traditional coastal community.

55. Although this line of argument is rebutted by the learned counsel for respondent Nos.2 and 3 on the ground that the said provision is made for seeking regularization of the construction by a person from traditional coastal community and hence would not be applicable in the present case and there was no regularization of the construction made, it is argued from their side that in fact, the provision of Para 8 III A(ii) of the CRZ Notification would be applicable which provides that no construction shall be permitted within NDZ except for repairs or reconstruction of existing authorized structure not exceeding existing Floor Space Index, existing plinth area and existing density and for permissible activities under the notification especially facilities essential for activities; construction/reconstruction of dwelling units of traditional coastal communities including fisherfolk may be permitted between 100 and 200 metres from the HTL.

56. The relief, which is being prayed by the applicant, is being treated by us to be covered under the expression “substantial question relating to environment” because any construction/reconstruction in CRZ area whether it is granted/permitted under the permission given by the GCZMA, its correctness has to be tested in the light of the provisions made in CRZ Notification, 2011, for which even if an appeal was required to be filed to get such permission quashed, we find that Original Application under Section 14 of the NGT Act would also lie as the said act on the part of respondent No.1 – GCZMA impacts on the ecology of the area in question. Therefore, on the principle, which has been followed by this Tribunal in the case of J. Mehta (supra), we are of the view that in the present case, substantial

question relating to impact on the environment has been raised, which can certainly be raised under Section 14 of the NGT Act as well.

57. The applicant has stated that first cause of action has arisen in June, 2022 when the applicant noticed huge construction on the beachfront side on the property/survey number in question, which was not clearly visible from the beach side but the said structures could not have been constructed without cutting sand dunes, land filling and felling of all the natural vegetation in the said area. Immediately on 08.06.2022, he informed the respondent No.1 about illegal unauthorized construction, but no action was taken. Further in the limitation clause of the application, it is stated that cause of action once again arose to the applicant when it received DGPS aerial survey report on 23.12.2022 and thereafter cause of action arose again when the applicant found out through Google search that respondent No.2 had commenced operations in full swing of the said Resort and he tried to qualify the said cause of action to continuing cause of action. This Original Application has been filed on 02.02.2023. We may also make it clear that not only the relief of demolition of illegal structures, but also its restoration is prayed and for that, the relief may be treated to be covered under Section 15 of the NGT Act, which lays down five years' period of limitation for filing the Original Application from the date of arising of first cause of action. Therefore, we find that this application is also filed under Section 15 of the NGT Act read with Section 14 of the Act and hence, the same is being held to have been filed within the prescribed period of limitation, since it is filed within five years from the date of cause of action having first arisen, as provided under Section 15 of the NGT Act.

58. The first issue, therefore, is decided to the effect that it is not necessary that the appeal should have been filed by the applicant for seeking quashing of the permission dated 04.04.2017, rather the effect of granting the said permission has resulted in causing adverse impact on the ecology of local area and that the construction which has been said to have been raised

illegally is also prayed to be demolished and the restoration of the original structure/area is also prayed to be directed. Therefore, this application is not held to be time barred and this issue is decided accordingly.

Issue No.(ii) :

59. As per Issue No. (ii), we have to decide as to whether the present Original Application under Sections 14, 15 read with Section 18 of the National Green Tribunal Act, 2010 can be held to be maintainable and if the same is not found to be maintainable and this Tribunal comes to the conclusion that an appeal was required to be filed for the reliefs sought, whether a suo motu action can be taken by this Tribunal, in case it comes to the conclusion after perusal of record that there was some violation of the provisions of the CRZ Notification, 2011 ? and whether appropriate order in that regard can be passed ?

60. In the light of the decision taken on Issue No. (i) above, we do not deem it necessary to render any separate finding on Issue No.(ii) and the same reasoning as is given by us on Issue No.(i) would be applicable in respect of Issue No.(ii) also. This issue is decided accordingly.

Issue Nos.(iii) and (iv) :

61. With respect to Issue No. (iii), we have to decide as to whether non-inclusion of relief pertaining to seeking quashing of the decision taken by respondent No.1 – GCZMA in its meeting held on 29.08.2023 with respect to deletion of condition No. (iv) of the permission dated 04.04.2017, would have an impact in granting prayer No.(a) i.e. quashing of permission dated 04.04.2017 granted by respondent No.1 – GCZMA ?

62. We are of the view that even if the applicant has not prayed for quashing of the minutes of the meeting of GCZMA dated 29.08.2023, wherein condition No.(iv) of the permission granted on 04.04.2017, has been considered and it is deemed appropriate to set aside that condition, we are of the view that the challenge to the same would not adversely impact granting the relief in the present matter to the applicant.

63. From the pleadings, we find that applicant's case is that originally there was only one small structure at the site in question which existed in Survey number in question, which had just 50 sq.mtrs area, which belonged to Ms. Maria Fernandes. The said 50 sq.mtrs area is being said by him to be on the basis of sale-deed dated 28.06.1982, by which DPDCL became the owners of 5300 sq.mtrs out of total 5350 sq.mtrs. Therefore, after out of total 5350 sq.mtrs., the DPDCL became owner of 5300 sq.mtrs., only 50 sq.mtrs area remained. But this aspect has not been responded to by respondent No.1 in its reply affidavit. Regarding this, our attention is drawn to Annexure-A16, which is at page 248 of the paper-book, which is Form I and XIV, which states the name of Ms. Maria Fernandes and survey number recorded is 100/10. Respondent No.3 is the son of Ms. Maria Fernandes. We do not find the mention of any structure to have been made in this Form I and XIV, rather total 53.50 sq.mtrs. area is shown as pot-kharab and 52.50 sq.mtrs. as garden and in other rights column thereof, the house belonging to Maria Fernandes is shown. We failed to appreciate as to how the applicant states that only one structure was standing on the site in the name of Maria Fernandes on the basis of said document.

64. It is alleged by the applicant that on the site, which was just 50 sq.mtrs, how respondent No.3 could obtain the permission for reconstruction of house Nos.439 for the area of 193.48 sq.mtrs. in the property i.e. survey No.100/10, is a question raised by him. This permission which has been granted by respondent No.1 is annexed at page 249 of the paper-book with respect to house No.439 and at page 523 relating to house No.438, in which no area has been disclosed. However, on the extracts of the minutes of the meeting dated 21.03.2017, on the basis of which these permissions are granted, are found at pages 507 and 525 of the paper-book. At page 507 of the paper-book, the extract of the minutes of 144th GCZMA meeting held on 21.03.2017 are annexed wherein plinth area of the said property is recorded as 193.48 sq.mtrs and proposed ground floor area is

shown as 193.48 sq.mtrs. Similarly, at page 525 of the paper-book, extract of the minutes of the said meeting dated 21.03.2017, related to house No.438 is annexed, wherein the plinth area is shown as 217.60 sq.mtrs. while the same area of the proposed ground floor area is shown.

65. Now we would like to go to the site inspection report in order to see as to what was found on the site by the Joint Committee, wherewith the site map is annexed, which shows that the structure shown by "A" relates to house No.438 and the area, which was found to have been constructed, was found to be 338 sq.mtrs and the area of structure shown by "B", which relates to house No.439, was found to be 462 sq.mtrs on the spot which is far above the area which was actually permitted in the said minutes on the basis of which the permissions were granted. No explanation is given in respect of this area from the side of respondent No.1, nor from the side of respondent Nos.2 and 3. It has also come on record that respondent No.3 is operating the said Resort without obtaining permission from the GCZMA. We do not find any response in regard to these violations from the GCZMA and we find that only reply which has been submitted by it relates to deletion of the condition (iv) of the permission dated 04.04.2017. This appears to be very casual approach on the part of respondent No.1 – GCZMA not to have gone through the allegations leveled against respondent Nos.2 to 4 in the application nor any explanation has been given as to how this area, which was permitted to be constructed, has been exceeded and what action was taken on the said construction.

66. We are of the view that in the case in hand, provision of Para 8 III A(ii) of the CRZ Notification, 2011 would be applicable which allows permissions to be granted in No Development Zone for only repairs or reconstruction of existing authorized structure not exceeding existing Floor Space Index, but this part of the said provision does not apply in the present case because it speaks of 'existing authorized structure' while in this case, permission does not appear to be in case of authorized structure and not specifically of any

dwelling unit of traditional coastal communities, while later part of it speaks that the permission for construction/reconstruction for dwelling unit of traditional coastal communities. If we take assistance of CRZ of Goa, which is provided in Para 8 V, sub-clause (3) (ii), it says that the reconstruction, repair works of the structures of local communities including fishermen community shall be permissible in CRZ. Clear word “structures” has been used and not dwelling unit only. Therefore, even if we go by the provision, intent of this Notification was to give facility to only local community, such as fishermen, who had structures within CRZ area and if they need to repair/reconstruct the same, permission could have been granted by respondent No.1. In the case in hand, respondent Nos.3 and 4 are said to be the persons belonging to community of traditional toddy tapper, who fall in the local community. Therefore, whatever structure they had, which required repairs/reconstruction, could be permitted by GCZMA to be reconstructed but the same should have been permitted only on the plinth of the said existing structure and not beyond that. It can also be firmly interpreted that these provisions would indicate that respondent No.1 ought to have been vigilant while granting permission as to whether the said persons were obtaining permission for their residential purposes or the same was being obtained for a property leased out to other parties for the purpose of commercial use. In the case in hand, it is quite apparent that respondent Nos.3 and 4, who belong to traditional toddy tapper community, by way of lease, had transferred the said land to respondent No.2, who is running full-fledged Resort on the said land and it is also alleged that the said transfer through lease-deed was effected even prior to grant of impugned permission by respondent No.1.

67. Since no response has been filed from the side of respondent No.1 – GCZMA on this aspect of the matter, we are of the view that the permission which has been granted on 04.04.2017 needs to be set aside and respondent No.1 needs to be directed to consider all these aspects afresh and if it comes

to the conclusion that there is any illegal structure in the light of the provisions cited above, the same would be ordered to be demolished by it. We direct that this exercise shall be completed by respondent No.1 – GCZMA within a period of three months from the date of uploading of this order. We decide Issue Nos. (iii) and (iv) accordingly.

68. In the result, this Original Application is partly allowed. The impugned permission dated 04.04.2017 is set aside, with the above direction to respondent No.1 - GCZMA.

69. In view of disposal of Original Application as above, I.A. No.159 of 2023, filed by respondent No.2, is rejected.

69. No order as to costs.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

January 03, 2024
O.A. No.15 OF 2023(WZ)
npj